Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1994

THOMAS A. MOORE, M.D.
Plaintiff-Petitioner

versus

BRENDA KELGER, ET AL
Defendant-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I

Whether the U. S. Court of Appeal for the Fifth Circuit erred in holding that evidence of perjury was immediately apparent when the Defendants found file folders and disks in Plaintiff-Petitioner's desk.

II

Whether the U. S. Court of Appeals for the Fifth Circuit erred in accepting Defendants' assertion that the Petitioner told District Court that he kept no records, despite ample evidence in the District Court records to the contrary.

III

Whether the U. S. Court of Appeal failure to distinguish Administrative Records from Medical Records led to confusion by the Appeals Court about the Facts.

IV

Whether the blanket acceptance of the Declarations of the Defendants', and the disregarding of the Plaintiff-Petitioner's Declaration by the U. S. Court of Appeals for the 5th District created an untenable double standard.

V

Whether the U. S. Court of Appeals for the Fifth District *CONFUSED* the legal access granted by a *Search Warrant*

QUESTIONS PRESENTED (continued)

with the legal access granted by a *General Writ of Assistance* in holding that the Defendant's *Writ of Entry* entitled them to unrestricted access to items in the Plaintiff-Petitioner's residence that were not mentioned with *particularity* in the Affidavit of Agent Brenda Felger and the Government's *Exparte Motion* for the *Writ of Entry.*

VI

Whether the U. S. Court of Appeals erred in concluding that it could resolve all relevant factual disputes despite overwhelming evidence to the contrary contained in the Plaintiff-Petitioner's *Complaint* and the attached *Memorandum* which attest in detail to the contrary.

VII

Whether the U. S. Court of Appeals for the Fifth Circuit showed bias toward the Plaintiff-Petitioner by the mis-statement of why the instant case was before their court in the first sentence of their opinion, thereby tainting all observations to follow.

VIII

Whether, in consideration of the preceding Question, the U. S. Court of Appeals for the Fifth Circuit erred in their order **REVERSING** the order of the District Court, **DENYING** the Defendant's Second Motion for Summary Judgment.

TABLE OF CONTENTS

Page

Questions Presented i

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Jurisdiction 2

Constitutional Provision Involved 2

Statement of the Case 2

1. *Proceedings Below.*

2. *Statement of the Facts.*

Reasons for Granting the Writ 23

Conclusion 28

TABLE OF AUTHORITIES

CASES **Page**

Coolidge, supra, 403 U.S. at 467 21,25

Doe v. Taylor Ind. School District, 975 F.2nd 137, 139 n.2 (5th Cir. 1992) 27

Duchesne v. Sugarman, 566 F. 2d 817, 832-833 (CA2 1977) 27

E. G. Landrum v. Moats, 576 F. 2d 1320, 1329 (CA8 1978) 27

Elliott v. Perez 751 F. 2d 1476 (1985) .....

G. M. Leasing Corp. v. U.S. 429 U.S. 338, 358, 50 L.ed.2d 530, 97 S.Ct.619 (1977) on remand 560 F.2d 1011 (CA 10 Utah), cert. den. 435 U.S. 923, 98 S.Ct. 1485, 55 L.Ed.2d 516—429 U.S. at 355 21

Harlow v. Fitzgerald
102 S. Ct. 2727 (1982)
102 S. Ct. Ante. at 2737, 2739
102 S. Ct. at 2739-2740 21,25,27

Hutchinson v. Proxmire 443 U.s. at 120 n. 9.99 S. Ct. 2680 n.9 27

Marbury v. Madison, 1 Cranch 137, 163, 2 L.Ed. 60 (1803) 24

TABLE OF AUTHORITES (continued)

CASES **Page**

Pizzarello v. U.S., at 408 F.2d 586, also at 408 F.2d 579 (2nd Cir. 1969, cert. denied, 396 U.S. 986, 90 S.t. 481 (1969) 25

Salas v. Carpenter, 980 F.2d 299 (5th Cir. 1992): 27

U. S. v Calandra, 414 U.S. 338, 94 S.Ct. 613, 38 L.ed.2d. 561 (1974) .....

United State v. Condo, 782 F. 2d. 1502, 1505 (9th Circ. 1986) 21,25

U.S. v. Haydel, Fifth Circuit- 649 F. 2d 1152 (5th Circ.1981), reh. den. 664 F.2d 84 (1981), cert. denied, 455 U.S. 1022, 72 L.Ed.2d 140, 102 S. Ct. 1721 .....

U. S. v. Mahoney, 712 F.2d 956 (5th Cir. 1983) *cert.denied* 104 S.Ct. 3590, 82 L.Ed.2d 887 .....

U.S. v. Showalter, 858 F.2d 149 (3rd Cir. 1988) .....

STATUTES:

26 U.S.C. § 7402(a) .....

26 U.S.C § 7402(b) .....

28 U.S.C. § 1291 .....

OCTOBER TERM, 1994

THOMAS A. MOORE, M.D.
PLAINTIFF-PETITIONER,

versus

BRENDA FELGER, ET AL.,
DEFENDANTS-RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Thomas A. Moore, M. D. petitions for a writ of certiorari to review the judgement of the UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT reversing the Rulings of Hon. Frederick Heebe, Judge, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, denying the *Motions for Summary Judgement* of the Defendants-Respondents as noted in the MINUTE ENTRIES of June 2, 1992, and March 26, 1993.

OPINIONS BELOW

The **Minute Entry** of Hon. Frederick Heebe, Judge of June 2, 1992, (App. C, A. 41-49) C.A. No. 92-0367 (U. S. D. C. EASTERN DIST. OF LA). The **Minute Entry** of Hon.

Frederick Heebe, Judge of August 5, 1992 (App. F, A. 64-68) C.A. No. 92-0367 (U. S. D. C. EASTERN DIST. OF LA). The **Minute Entry** of Hon. Frederick Heebe, Judge of March 26, 1993, (App. G, A. 69-80) C. A. No. 92-0367 (U. S. D. C. EASTERN DIST. OF LA). The Ruling of UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT of April 29, 1994(App. J)

JURISDICTION

The judgment of the UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT was entered on Apr. 29, 1994. Jurisdiction is conferred on this Court by 28 U. S. C. § 1331.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

ARTICLE IV

"The right of the people to be secured in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

1. *Proceedings Below.*

On Jan. 29, 1992, Plaintiff-Petitioner, Thomas A. Moore, M.D. filed a *COMPLAINT FOR DAMAGES WITH REQUEST FOR JURY TRIAL* against Brenda Felger, et al, Defendants-Respondents, (C.A. NO. 92-0367) (App. A, A-1-5 and App. B, A-6-40).

On Feb. 18, 1992, **DEFENDANTS' MOTION FOR EXTENSION OF TIME TO SERVE A RESPONSIVE PLEADING** was filed, and an **ORDER GRANTING EXTENSION OF TIME** was given; stating, "-the defendants shall have up to and including April 3, 1992, to serve a responsive pleading to the plaintiff's complaint.

On April 2, 1992, **DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGEMENT AND FOR RULE 11 SANCTIONS** was filed, absent "a responsive pleading to the plaintiff's complaint."

On Apr. 20, 1992, **RESPONSE OF PLAINTIFF, THOMAS A. MOORE, M.D. TO DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGMENT AND FOR RULE 11 SANCTIONS** was filed. Coincidentally, on Apr. 20, 1992, Defendants counsel, Jose F. De Leon, filed an **APPELLEES' MOTION FOR EXTENSION OF TIME TO SERVE BRIEF** in the U. S. D. C. EASTERN DIST. OF LA citing Case Nos. 90-12071-B Chapter 11, and C. A. No. 92- 0569. Essentially, the argument made was that if the Defendants eventually prevailed in **DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGEMENT AND FOR RULE 11 SANCTIONS** filed Apr. 2, 1992, they could save the time and trouble of preparing "a responsive pleading to the plaintiff's complaint", which was their obligation to have filed by Apr. 3, 1992 as stated in the above noted **ORDER GRANTING**

EXTENSION OF TIME.

The Ruling of Hon. Frederick Heebe, Judge of June 2, 1992, (App. C, A-41-49) C. A. No. 92-0367 (U. S. D. C. EASTERN DIST. OF LA), failed to dismiss the Defendants on any issue other then "whether the defendants legally entered plaintiff's premises".

On June 15, 1992, **MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS' ENTRY INTO PLAINTIFFS'S HOME** (APP. D, A-50-60) was filed.

On June 17, 1992, Defendants filed **Answer.** In this **ANSWER** the Defendants' FIRST DEFENSE was, "This action is barred by prescription."; SECOND DEFENSE was, " This action is barred by qualified immunity of the defendants."; and the THIRD DEFENSE was, "The court lacks jurisdiction over the defendants due to lack of service of process." The FIRST and SECOND had been ruled on by Judge Heebe in his Minute Entry fifteen days earlier, see the **Minute Entry** of Hon. Frederick Heebe, Judge of June 2, 1992, (App. C, A-41-49). The third was totally unsupported by any evidence to the contrary. See the **Minute Entry** of Hon. Frederick Heebe, Judge of Aug. 5, 1992. To this date the Defendants have yet to file an Answer with any detailed evidence to charges in the **COMPLAINT** of Jan. 29, 1992. (App. A, A-1-5)(App. B, A-6-40)

On July 14, 1992, **DEFENDANTS' OPPOSITION TO THE PLAINTIFF'S MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS' ENTRY INTO THE PLAINTIFF'S HOME** was filed.

On July 22, 1992, after *Oral Argument,* (App. E. A-61-63), on the **MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS' ENTRY INTO PLAIN-**

TIFF'S HOME (APP. D, A-50-60), Judge Heebe ruled in the Defendants' favor and maintained his ruling of noted June 2, 1992 on that issue.

Plaintiff appealed the Ruling on **THE LEGALITY OF DEFENDANTS' ENTRY INTO PLAINTIFF'S HOME,** however, Plaintiff was apprised that he could not appeal the Ruling until Final Judgment had been rendered. Plaintiff has subsequently appealed that Ruling, (U. S. COURT OF APPEALS FOR THE FIFTH CIRCUIT, No. 94-30383). See below.

On Nov. 23, 1992 Judge Heebe filed **Notice of PRELIMINARY CONFERENCE IN C. A. NO. 92-0367** before Magaistrate Moore on December 8, 1992. PRE-TRIAL PROCEDURE and STATEMENT OF POLICY REGARDING DISCOVERY MOTIONS WERE ENCLOSED. Following the pre-trial conference, discovery was imminent.

In early 1993, Defendants' filed a **SECOND MOTION FOR SUMMARY JUDGMENT.** Attached to the Motion and Labeled as "government Exhibit C", were copies of Affidavits of seventeen Internal Revenue employees and one Assst. U. S. Attorney. These Affidavits (App. H, A-81-132 and A-134-142) purported to cover the activities of the Affiants on the dates given in the **COMPLAINT FOR DAMAGES AND REQUEST FOR JURY TRIAL.**(App. A, A-1-5 and App. B, A-6-40)

On Feb. 5, 1993 a **MOTION TO ENROLL** as counsel of record was filed by Arthur A. Lemann III, (#8296), and Martha L. Adams (#20666). An accompanying **MOTION FOR CONTINUANCE** was filed that same date. The

ORDERS GRANTING BOTH Motions were signed by Judge Heebe on Feb. 9, 1993.

On March 9, 1993 Plaintiff's counsel filed **OPPOSITION TO DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT.**

On March 17, 1993 the Hearing was held before Judge Heebe.

On March 26, 1993, Judge Heebe denied the Defendants' Second Motion for Summary Judgment. (App. G, A-69-80).

Facts and documentation of applicable Law were placed in his **MINUTE ENTRY,** (App. G, A-69-80).

Defendants-Respondents shortly th reafter filed an Appeal from the Order of the U. S. D. C. of the Eastern District of Louisiana in the U. S. Court of Appeals for the Fifth Circuit, (5th Circ. No. 93-3271)

On or about July 12, 1993 **BRIEF FOR THE APPELLANTS** was filed, (5th Circ. No. 93-3271).

On Aug. 10, 1993 **APPELLEE'S MOTION TO DISMISS FOR LACK OF APPELLATE JURISDICTION** was filed, (5th Circ. No. 93-3271).

On Sept. 22, 1993 the Court ordered the motion carried with the case on appeal. (5th Circ. No. 93-3271)

On Oct. 19, 1993 **ORIGINAL BRIEF ON BEHALF OF APPELLEE, THOMAS A. MOORE, M.D.** was filed, (5th Circ. No. 93-3271).

On or about Nov. 8, 1993 **REPLY BRIEF FOR THE**

APPELLANTS was filed, (5th Circ. No. 93-3271).

On March 3, 1994 Oral Argument was heard by a three Judge Panel of the U. S. Court of Appeals, Fifth Circuit, March 3, 1994.

On Apr. 29, 1994, the Fifth Circuit **REVERSED** the ORDER of the District Court denying summary judgment, and judgment was **RENDERED** in favor of the defendants. (App. J, A-144-156)

On May 25, 1994, Final Judgement was given by U. S. D. C. Judge Heebe in accordance with the Fifth Circuit Court's Apr. 29, 1994 Ruling.

The Plaintiff-Petitioner has Appealed the Final Judgment of May 25, 1994 to contest the Distr. Court's earlier Ruling on the legality of Defendants' Entry into the Plaintiff's home, June 2, 1992 (App. C, A-42). (U. S. COURT OF APPEALS FOR THE FIFTH CIRCUIT, No. 94-30383).

2. Statement of the Facts:

This action by the Plaintiff-Petitioner arises out of the injury and damages which he alleged in his **COMPLAINT FOR DAMAGES AND REQUEST FOR JURY TRIAL.**, (App. A, A-1-5), and then supported in his attached, **MEMORANDUM TO SUBSTANTIATE INJURY AND DAMAGES.** (APP. B, A-6-40).

Plaintiff-Petitioner has been and remains in the active practice of Psychiatry since July, 1963. His practice was in New Orleans and Houma, LA until 1976 at which time he phased out the practice in New Orleans, and since he has practiced solely in Houma. From 1963 until the fall of 1985, except for a few months in 1972 or 1973 when he was on the Medical Staff at Coliseum House and DePaul hospitals in New Orleans, his practice was limited to Long-term intensive Psychoanalytically-Oriented Therapy which

was conducted in his Office.

This type therapy involves regular visits, from once per week to as many as five per week depending on the case and other circumstances. The case load of any practitioner of this type therapy is necessarily limited by the great amount of time devoted to each individual patient, and turnover of patients is also limited as the treatment may last from many months to a number of years.

As a result of the small number of active cases at any particular time, it is the practice of many such therapists to simply go through their appointment book at the end of each month, count the visits, multiply the number by the applicable fee, and hand deliver the statement to the patient on the last visit of the month. While in residency training, and continuing into his early years in practice, the Plaintiff-Petitioner underwent over four years of didactic analysis by a Training Analyst associated with the New Orleeans Psychoanalytic Institute. The method of billing noted above was used by the Plaintiff-Petitioner's treating Analyst, as well as by a Supervising Analyst seen for case supervision. Plaintiff-Petitioner adopted the same very simple method in his emerging practice.

Following the move to consolidate his practice in Houma in 1976, Plaintiff-Petitioner lived in a rental house twelve miles south of Houma for four years. He was unmarried at that time. In October, 1980, Plaintiff-Petitioner married Dorothy Lynn Heaslip. It was a second marriage for both. Not wishing to jeopardize his new wife with his accumulating financial obligations, the couple entered into a marital contract several days after their marriage. Dorothy Lynn H. Brennecke had acquired a piece of property in the late 1970's. In the fall of 1980, she sold that property and invested the funds to secure a Lease-Purchase Agreement on a house and property in the same subdivision as the property she sold. Late in the year of 1980, the newly married

couple moved into the house *she* so secured.

It is a matter of record that Plaintiff-Petitioner, and Dorothy Lynn Heaslip Brennecke had lived together from early 1974. Because of their backgrounds, and to preserve the feelings and sensibilities of their minor children from their respective earlier marriages, as well as other family members, and acquaintances, the couple presented an outer facade of being married during those years. Early in the year of 1980, acting under the impression that the couple was legally married, Dorothy Lynn Heaslip Brennecke was presented with an I. R. S. Assessment of one-half the tax liabilities of the Plaintiff-Petitioner which had just been assessed by Agent Gerald Fortier after examination of the years, 1977-'78-'79. We had the incongruous situation of I. R. S. assessments being sent to Lynn H. Brennecke, (Brennecke was her first husband's name), while she was being assessed for one-half the Plaintiff-Petitioner's assessment as if a community obligation existed.

Having been assessed these obligations, her bank accounts were seized. She obtained a letter of credit from the Progressive Bank & Trust by depositing a number of her personal jewelry items with appraisals with the Bank. The letter of credit was later returned by the I. R. S. after it was established in Tax Court that she was not married to the Plaintiff-Petitioner during the years in question. With the return of the letter of credit her jewelry items were returned to her. Many of the same items of jewelry were later mentioned in Agent Felger's Affidavit attached to the Government' Exparte Motion to Secure the Writ of Entry used by the I. R. S. on Mar. 29 & 30, 1990. (It must be noted, that items acquired or given to a third party by a taxpayer in years when no tax liability exists do not fall subject to a lien for tax liabilities the donor in subsequent years.).

During the early 1980s, the Plaintiff-Petitioner's financial problems compounded. Faced with heavy judicially mandated child-support for his children and alimony payments to his ex-wife, he fell further and further behind. His ability to expand his earnings was non-existent, and the time and funds expended simply keeping the "Wolves from the door" allowed for a "no gain" situation.

In 1985, the I. R. S. stepped up it's efforts to collect the Liabilities assessed for 1977-'78-'79. By this time, the amount owed for those years had mushroomed to several times the amount of the assessed taxes by the addition of penalties and interest. Harassment by Agents of both the Plaintiff-Petitioner and his wife was unremitting. Agent Cyrus Fanguy called Mrs. Moore in and began what he stated was an independent audit of her separately filed returns. On one occasion, with her tax counsel, Paul Cordes present, he took hours to hand copy several years of her cancelled checks. Agent Fanguy clearly went beyond the Fourth Amendment mandates of probable cause when he "-issued over 1,200 summonses to individuals, corporations and banks in an effort to locate information-" and "Nothing of any consequence was obtained from the summonses." (App. H, A-97) -Declaration of Cyrus J. Fanguy-numerical 6.) Further, in his Deposition of April 10, 1992 in C. A. 90-1918 -U. S. D. C. East. Distr. of LA (Exhibit #18 of App. B), Agent C. Fanguy was quick to dilute the responsibility for his actions. "These summonses were issued under the instruction of our district counsel-". This was not a unilateral thing that I just did. There were other people involved in the issuance of the summonses." -I'll do what I'm told." (For Complete Q & A see Deposistion Page 27, line 13 through Page 29 line 8, or, Footnote 5, of **MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS' ENTRY INTO PLAINTIFF'S HOME** (APP. D, A-58-60). On another occasion , with Agent C. Fanguy present, his Supervisor, Bobby Windgard told Mrs. Moore in

the presence of her attorney, Paul Cordes, 'We are going to get Dr. Moore, and if it takes running over you that's too bad." Quote paraphrased.

It was not long afterward when on the morning of May 17, 1985, Mr. Windgard's statement came to fruition. Agent John Byrd, acting on spotty information, exercised the questionable tactic of a "Jeopardy Seizure". Though Plaintiff-Petitioner admits that at the time of this action, there were a few items held by his wife which could be construed as Transferee items, most notably an automobile, this could have been adressed by the normal Summons abilities of the I. R. S. The justification for the use of a measure instituted to deal with drug lords, or organized crime figures seemed to have at most, some Constitutional ramifications for the Service, and at least was an exercise in overkill. Plaintiff-Petitioner was told by one of the Agents present, "We can put boats in the bayous and planes in the air! Yu can't get away!" Alas, all the Plaintiff-Petitioner and his wife wanted to do is stay in *her* house which was their home. Agents paraded through the home during the day of May 17, 1985, they took pictures of the contents, and checked their copies of the I. R. S. Procedural handbook (Brenda Felger, who was not an Agent at the time, but a secretary, was brought through the house to witness the power wielded by the Service and it's Agents. How could she help but want to be one!?!) The Agents did not take any of the household contents. A locksmith was called, the house was secured, numerous stickers warning of the I. R. S. seizure were posted on portals of entrance and exit, and the agents departed. (The automobile in question had been seized earlier in the day from Plaintiff-Petitioner's parking spot at his office, and Mrs. Moore had been followed to a used bookstore where Agents took the van she was driving while her friends and acquaintances looked on.)

Over the next two weeks, Plaintiff-Petitioner was only able to go into the house when in the company of two

I. R. S. Agents. This was permitted so he could retrieve items to liquidate to give cash to the I. R. S. Mrs. Moore's main concern, and that of the Plaintiff-Petitioner, in her behalf, was to restore her to her home. Family members were contacted. Mrs. Moore's parents, and one of her two brothers, made loans to Mrs. Moore, who in turn, loaned the funds to the Plaintiff-Petitioner, who delivered the funds to the I. R. S. One of the Plaintiff-Petitioner's brothers, Father Edmund Moore, made a loan to the Plaintiff-Petitoner for the same purpose. As the assessment was slightly in excess of $185,000.00, available sources were running thin. Approximately $135,000.00 had been raised when Mrs. Moore offered to sell her jewelry, and lend the proceeds to the Plaintiff-Petitioner to attempt to pay the assessment so she could return to her home. Her jewelry items, the same given to secure the Letter of Credit in 1980, were retrieved from the home with Agent Byrd and another Agent and delivered to the Service to be used as collateral, by which Mrs. Moore could advance additional loans to the Plaintiff-Petitioner. Mr. Byrd, recognizing that, "one in the hand is worth two in the bush", was interested in something more liquid than the jewelry items which would take time to find a prospective buyer, or, if sold at forced sale, would be sacrificed. He turned his attention to Mrs. Moore's equity in the Lease-Purchase Agreement on her house. By placing pressure on the owner of the house and Mrs. Moore, he created a scenario which ended in Mrs. Moore surrendering her position in the Lease-Purchase Agreement. (Brenda Felger went to the signing of the agreement by which Mrs. Moore surrendered her interest in the Lease-Purchase Agreement, and actually signed as a Witness.) Mrs. Moore realized approximately $65,000.00 from the Property's owner, and loaned the proceeds to Plaintiff-Petitioner, $50,000.00 of which was immediately paid to the IRS. This made the assessment **PAID IN FULL** and the automobiles, and the Jewelry items were released.

Plaintiff-Petitioner and Mrs. Moore were allowed to return to the house on May 31, 1985, after the assessment had been paid.

It became immediately clear that the owner of the house wanted to sell the property. A verbal agreement was stuck between Mrs. Moore and the owner that he would sell to her, if she could pay him an amount equal to his equity, until she made arrangements to finance the balance. Each year in early June, the Plaintiff-Petitoner's brother, Rev. Father Edmund J. Moore, (now Rt. Rev. Monsignor), visits when on vacation. This yearly visit which was the case for many years prior to 1985, and has been the case each and every year since, occurred soon after the above noted seizure. Indeed, as noted above, his brother had made the Plaintiff-Petitioner a loan of $15,000.00 which had been part of the funds to satisfy the Assessment. Inevitably, discussion of the "Catch 22" in which the Plaintiff-Petitoner found himself followed. Father Moore offered to advance to the Plaintiff-Petitioner a loan of the remainder of his life savings which approximated the $50,000.00 needed. He drove back to his Parish in Monroe, Louisiana, made the necessary arrangements and returned with the funds. Plaintiff-Petitoner repaid to Mrs. Moore $50,000.00 of the funds loaned to him to pay taxes. Mrs. Moore added the $50,000.00 repaid to the $15,000.00 she still had from her release of the Lease-Purchase Agreement and began her efforts to secure financing. She finalized her financing efforts, and purchased the property at 207 Oak Alley Drive in the summer of 1986, when she was able to qualify for the loan by lowering the amount financed by the amount of $25,000.00 which she realized through the sale of an emerald ring which she had since the early 1970's. (This item of jewelry had been listed on the collateral list for the letter of credit in 1980, and again had been listed in the items offered in loan to the Plaintiff-Petitoner in 1985 to raise funds for Plaintiff-Petitioner's taxes. It was listed in items returned to Mrs. Moore May 31, 1985. This item is

mentioned in Agent Felger's Affidavit as being held for the Plaintiff-Petitioner, by Mrs. Moore, as nominee. It also appears to be the item referred to by Agent McKinell in his **DECLARATION**, (App. H- Paragraph 8. A-103), as he makes scurrilous accusations that Mrs. Moore has somehow foiled his efforts by surreptitiously purloining it from under his nose.) All of the other items of jewelry, as well as every piece of furnishings particularized by Agent Felger in her **Affidavit** in support of the **Exparte Motion** were subsequently returned to Mrs. Moore. (App. N, A-210c. The property purchased by Mrs. Moore in 1986 - using Funds from the sale of property she acquired in the late '70's and the proceeds from the sale of her ring acquired in the early 70's was seized March 29, 1990 after being listed as a Nominee item by Agent Felger. Mrs. Moore filed a Wrongful Levy Suit (C.A. No 90-1989) soon after the seizure. However, Francisco Jose DeLeon, Counsel for the government, took Days of Deposition from her and many others. As her bank accounts and retirement funds were also seized as "Nominee" of the Petitioner, she found herself unable to support counsel. (See A-22-4th Paragraph App. B) Her counsel asked for, and was granted, permission to withdraw from her case in the summer of 1991. Attempts to secure new counsel, without funds, proved fruitless. She was forced to enter into a settlement in the fall of 1991. (App. N, A-209-217). (Mrs. Moore was once again unfairly forced to surrender her home because she stood between the Plaintiff-Petitioner and the Agents involved.) (App. N, A-210a.)

Having paid Mrs. Moore the $50,000.00 borrowed from his brother in June, 1985, Plaintiff-Petitioner's position was not improved. He still owed that $50,000.00, though now to his brother rather than to his wife. He still owed his wife $32,000.00 she had borrowed from her ageing parents. Plaintiff-Petitioner was under extreme pressure to meet these obligations, as quickly as possible.There were also legal fees in 1980 and again in 1985. Some relief came quickly from an unexpected quarter. Plaintiff-Petitioner received three Tax Refund checks, one for each year of the

assessments of 1977, '78, & '79, totalling over $10,000.00. These funds were immediately repaid to Mrs. Moore so she could begin to reduce the loans to her family members .As noted earlier, there were a few items seized which were legitimately under scrutiny by the I. R. S. The most notable was a 1981 Mercedes 380 SEL, which though purchased (used) for Mrs. Moore, she rarely drove it, preferring to drive a 1982 GMC van. This automobile was registered in Mrs. Moore's name as it was purchased for her. The Automobile was sold to G. M. A. C., in late 1985, refinanced, and the proceeds were used to reduce the amount of her loan from her brother, (the proceeds of that loan from her brother having been loaned in turn to the Plaintiff-Petitioner to pay taxes.) This point may seem labored, but it's importance will be shown below.

In the summer of 1985, working with Tax Attorneys from the firm of Lemie, Kelleher, et al, of New Orleans, and with Agent Cyrus Fanguy, Plaintiff-Petitioner prepared and submitted information on his income and deductions for the years 1980 through 1984. This information was given so the returns could be submitted so the proper tax could be assessed for the years in question. The returns were prepared, the Tax was calculated, and an assessment was made in accordance with I. R. S. policy. In early 1986, Agent Wendy McSpadden, came unaccompanied by any other Agent to Plaintiff-Petitioner's home to request payment in the approximate amount of $595,000.00 The dim prospect of collection of any significant funds at that time was discussed amicably. Plaintiff-Petitoner cited the events of the previous year. Subsequently, liens were filed and published locally. Plaintiff-Petitioner filed his 1985 return in a timely fashion.

In April of 1987, Plaintiff-Petitioner had his first meeting with Agent Eugene E. Nepveaux. He met with Agent Nepveaux in his office at 501 Barrow Street, immediately across from Haydel Medical Clinic, the address of which is 502 Barrow Street. (The Haydel Medical Clinic's 502 Barrow Street address has been used by the

Plaintiff-Petitioner continuously since 1964 for reasons too numerous to list, but none of which are clandestine. (As suggested in Agent Felger's **Affidavit** to support the **EX-PARTE MOTION** to obtain the **WRIT OF ENTRY.**) In that initial interview, Plaintiff-Petitioner was pleased to show Agent Nepveaux his attempts to at least stay current by showing him the actual cashier's check he was about to put in the mail with his 1986 return, along with a cashier's check for the 1st quarterly estimate for 1987. Any idea that this might be seen in a favorable light faded soon afterward. Agent Nepveaux made it clear that he was in a collection mode and in no mood to discuss niceties. When Plaintiff-Petitioner related the realities of his limited means. Agent Nepveaux made it clear that he considered any and all property owned by Mrs. Moore to be back in play. His direct statement early on was, "She should sell everything she's got, give us the money, and then we'll see what else we can get." With his intent thus stated, meetings were soon arranged to discuss the propriety of his conclusions, and he met with Mr. Charley Schrader, who at that point represented Mrs. Moore, (His representation of the Plaintiff-Petitioner did not commence until he represented the Plaintiff-Petitioner in a meeting with Magistrate Alma Chasez relative to the enforcement of Agent Nepveaux's Mar. 6, 1989 Summons sometime in the summer of 1989.), and her C. P. A. Barry Melancon. (Mr. Melancon did also serve as Plaintiff-Petitoner's accountant at that time.) Mrs. Moore's counsel and her accountant objected strongly to Agent Nepveaux's conclusions about Mrs. Moore's assets. Coincident with the discussion of Mrs. Moore's position as presented by her counsel, Mr. Melancon was attempting to set the stage for an Offer in Compromise as a realistic approach to settlement of Plaintiff-Petitioner's ongoing problems with the Service. Agent Nepveaux stated he felt a realistic offer that he could support would be $ 328,000.00. In following discussions, (Mrs. Moore's representatives could only conclude that again, Agent Nepveaux was considering everything Mrs. Moore owned, things she had given up to repay the

loans to her family members, and possibly seeing her as being able to borrow again even though the obligation was never hers. In order to try to introduce some reason into the mix, Mrs. Moore's representatives arranged to take Agent Nepveaux through the house in the summer of 1987. Plaintiff-Petitoner accompanied Mrs. Moore's representatives, Charley Schrader and Barry Melancon through the house showing him every room, including Mrs. Moore's study and the room Plaintiff-Petitioner used as an office. He made comment to the Plaintiff-Petitioner while in the latter room, "I guess this is where the bills are made." Plaintiff-Petitioner recalls nodding in the affirmative.

On August 17, 1987, Mr. Melancon wrote to Agent Nepveaux, stating that an Offer in Compromise has been submitted (for $60,000.00 as we had discussed) in a timely fashion. He referred to Mr. Nepveaux's comment to the Plaintiff-Petitioner in the meeting in question when he stated he could not recommend acceptance of an offer in that amount, i.e., "You make more money than I do, and I manage to live well. You can pay more." Mr. Melancon requested a listing of the items which compromised a lien value of $328.000.00. Also requested, "That Dr. Moore and/or Lynn Moore be provided with a listing of those items allegedly transferred that are being considered in the proposed transferee assessment along with relative values." (App. B, A-30 Exhibit List- Exhibit #7, A-30) Agent Nepveaux *never* responded to any of the requests in that letter.

The Offer in Compromise mentioned above was returned as unacceptable in early 1988 as not being in the best interest of the Government, with the added request to pay it in full as soon as possible. With additional interest it was approximately $650,000.00. Collection efforts made it impossible to conduct any business in a normal fashion. Agent Nepveaux was as likely to turn up in Plaintiff-Petitioner's garage in the A. M., as at the Hospital Administrator's office, or elsewhere. Things went from bad to worse over the next couple years leading to the March 6,

1989 summons. Plaintiff-Petitioner submits, and admits, that he did everything he could within the law to resist the production of the materials sought by the Summons of March 6, 1989. It must be noted that the kind of confidentiality needed to accomplish the kind of therapy he did exclusively through late 1985, is tantamount to the Seal of Confession. It was with great reluctance and heavy soul that the Plaintiff-Petitioner gave his records to the Court the day before the Feb. 21, 1990 Contempt Hearing. The records were being kept in exactly the same manner as Plaintiff-Petitioner had kept his accounting records since 1963. As pointed out in Judge Collins' court, once the balances owing were transferred to the Statement, it also contained a Diagnosis. (App. B, A-30 Exhibit #3) Plaintiff' Petitoner respectfully submits that the record shows that he fully complied with the Mar. 6, 1989 Summons before his appearance in the Mar. 7, 1990 hearing. **Appellants Brief to Show His Compliance with Civil Summons and in Opposistion to the Rule of Contempt** (App. K, A-157-199) Plaintiff-Petitoner avers that all the statements made in his **DECLARATION** (App. H, A-133-136) of March 9, 1993, attached to the **OPPOSITION TO DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT**, are true.

Following the March 7, 1990 Hearing, (App. B, A-30 Exhibit #3) Plaintiff-Petitioner appeared with his counsel Charley Schrader, in response to a second Summons issued March 5, 1990, for information exactly as requested in the Summons of March 6, 1989, but for a different time period. That meeting was with Agent Brenda Felger and Agent Steve Fanguy on Mar. 19, 1990. Agent Felger took copious notes during the meeting. (App. K, See A-194, last sentence continuing to first paragraph A-195).

In the Apr. 29, 1994 (5th Circ. Opinion) under **II, The Search, B. The plain view Doctrine, 2. Immediate Apparent Evidence of Perjury, first paragraph,** *"The district court asked, "Dr. Moore, you don't have any administrative records, is that correct?" Moore replied,* **"No, sir, but that**

is about to be corrected."*Based on Moore's statements, it was reasonable (and accurate) for the I. R. S. agents to believe that Moore testified that he kept no patient records.*"(A-153). There are problems with this conclusion. One: There is a difference between administrative and/or accounting records; and patient histories, evaluations, hospital records, etc., which are necessary for ongoing patient care. The discovered records were perused, and seized, allegedly returned to their original place in the desk (which, by way, is a standard 60" by 30" office desk which did not require disassembly to be removed from the residence), and then re-seized under a Warrant issued nine hours after the Agents entered the office. (Agent Oubre had threatened Mr. C. Schrader with arrest for interference with the Agents in the office in mid-morning.) Though these records contained face sheets which had been recently prepared and added as reported to Agents B. Felger and Steve Fanguy to satisfy the auditing needs of the Service. (App. K, A-195-195). The overwhelming volume of the records seized was clinical material of the most private and personal nature, e.g. Hospital Discharge Summeries, Lab. tests, Psychologicaltes & results, etc.

Two: Agent Steve Fanguy was able to recall testimony from the Court, when he wasn't there, but did not recall the details of the Summons meeting of March 19, 1990 which he attended, and which directly conflicts with his **DECLARATION** (App. H, A-130 8.)

In the **REPLY BRIEF FOR THE APPELLANTS**, (App.I, A-143) the Defendants' counsel states, "*Indeed as a factual matter, the record in the instant case clearly contains sufficient factual material in the form of affidavits from all of the individual defendants setting forth just what each one was doing at the time relevant to the suit. There is little more that could be brought out in a full-scale trial with respect to each defendant's conduct.*" A quick review of the original Affidavits (App. H, A-81-132, A-137-142), will show that all but one was produced on the same machine and in the same format. The last is very in-

teresting., it is the **DECLARATION** (App. H, A-126-127) of James M. Valentine, now retired Chief of Branch 1, Collection Division, New Orleans District, Internal Revenue Service, from Feb. 1983 to Jan. 1987, and again from Oct. 1988 to Nov. 30, 1990. The times are inclusive of both the seizure of May 17, 1985, and the seizure of March 29 & 30, 1990. Mr. Valentine goes on to say, "2. While a Branch Chief, 1 managed seven (7) **subordinate** (emphasis added) Group Managers in six groups over a designated area of the State of Louisiana. -" One would have to wonder if he had jurisdiction over the Lafayette Group Manager (?), and the Baton Rouge Group Manager, fellow defendant and affiant, Henry Frances McKinell. If so, did effective control of the collection effort change when Agent Felger took over for Agent Nepveaux on Feb. 28, 1990. Under 4. (App. H, A-127) Agent Valentine declares"-A Branch Chief is not normally on site for the seizure of assets. However, Dr. Moore's case had some of the characteristics of tax protestor type activity, and I was concerned about the safety of our employees." Would Agent Valentine have the Court believe he was there to protect the two armed CID agents, or the others. Was he also armed because he knew the Plaintiff-Petitioner was a hunter, as Agent Felger asserted. (App. H, A-138,5) Under 5. (App. H, A-127) he further declares, "- *I was shown what looked like account receivable records. These records had been found while our employees were searching for assets to seize. Since Dr. Moore had denied having this type of records under oath, I told Group Manager Henry McKinell that this was a matter for discussion with counsel.*" Did he tell this to McKinell before or after the records had been removed to the CID vehicle the first time? Is it a coincidence that Stevens Moore received a phone call from McKinell at "*approximately 3:30 P.M.*" See Stevens Moore's Declaration (App. H, A-110)). Did Agent Algu know he was carrying women's fur coats to the I. R. S. office in Houma (Algu's Declaration. App. H, A-84,5). Was the carrying of, "*-a file folder that held invoices, appraisals and other information-*", "*-to the I. R. S. office in Houma to copy the*

contents-", and then, *"I returned the file folder to Mr. McKinell at the residence of Dr. Moore,"* be conduct which a reasonable person, "knew or should have known" had a constitutionally violative effect." 102 S. Ct. 2727(1982). McKinell Declares (App. H, A-103, 7.). *At some point during the day, I was shown a file folder that held invoices, jewelry appraisals, and other documents relating to the assets that were being seized or could be seized at the residence. I viewed this file folder as pertinent to the search for property subject to levy as authorized by the* **Writ Of Entry.** *I requested Revenue Officer Aide Dina Bonvillain to make a copy of the contents of the file folder. The Revenue Officer Aide went to the I. R. S. office to copy the documents. The file folder was then returned to Dr. Moore's residence and left there."* (App. H, A-103,7) Should group Mgr. McKinell have known, "The I. R. S. may execute a levy by seizing a taxpayer's property in order to satisfy his indebtedness. However, the I. R. S. cannot intrude into an area of privacy without violating the Fourth Amendment unless it obtains a valid search warrant. A search warrant must be based on probable cause." "One of the primary evils intended to be eliminated by the Fourth Amendment was the massive intrusion on privacy undertaken in the collection of taxes pursuant to general warrants and writs of assistance." *G. M. Leasing Corp. v. U.S., 429 U. S. 338, 355, 358.* This file was not taken from a desk that needed disassembling, but rather from a built-in file under book selves in Mrs. Moore's study. A close scrutiny of the contents, though unconstitutional, *See U. S. v. Condo & Coolidge, Supra* (see page 25) *would not have shown McKinell other objects to seize, but rather information about objects that should not have been seized.* The file contained appraisals and receipts, etc. in the name of Mrs. Moore, and even in her name as Brennecke, pre-dating 1980, and these objects would not have been the subject of a Lien even if given by the Plaintiff-Petitioner in a year in which he had no Tax liability. (See App. B, A-24 Paragraph 2 , Testimony of Eugene Nepveaux, and App. B, Exhibit #3-Testimony of Brenda Felger)

Plaintiff-Petitioner avers that the affidavits of the Agents raise far more factual questions than they resolve. The Testimony of Agents Felger and Nepveaux noted above (App. B, A-16 through 27, From Exhibit #2 - Testimony of Eugene Nepveaux, and App. B, Exhibit#3-Testimony of Brenda Felger) show conflicts with each other at the time of the depositions, and the information given by the Affiants (A-112 to 115 - Nepveaux, A-137 to 142 - Felger) The Plaintiff-Petitioner severely questions even who may have authored the eventually signed Affdavits by which the Defendants attempt to evade responsibility for their, "-knowing, malicious, deliberate and intentional misconduct - and/or willful and wanton misconduct-and/or wilful and wanton misconduct-and/or grossly negligent misconduct'" (App. A, A-3,4)

Plaintiff-Petitioner avers that he **DID NOT** accept "-*responsibility for having made false material declarations before the district court during contempt proceedings regarding his record keeping*" as stated in the record of the case by Judge Harlington Wood, Jr. (App. J A-153, last statment of Paragraph 1). Plaintiff-Petitioner avers that the Pre-Trial Diversion agreement was entered into so he could give deposition testimony in Civil action No: 90-1918. Counsel for the Plaintiff-Petitioner had appealed the contempt ruling of Judge Collins in Docket No. 89-2451, and The Pre-trial diversion agreement only contained the *alleged accusation* of perjury. Plaintiff-Petitioner filed his **APPELLANT'S BRIEF TO SHOW HIS COMPLIANCE WITH CIVIL SUMMONS AND IN OPPOSITION TO THE RULE OF CONTEMPT** IN THE U.S. CT. OF APPEALS 5th Cir., case No. 90-3426 (App. K, A-157 to 199) in a timely fashion. Ten days before the Governments reply Brief was due, Sept. 11, 1992, the Government filed a **MOTION TO REMAND AND TO SUSPEND BRIEFING SCHEDULE PENDING DISPOSITION OF THE MOTION,**(App. L, A-200-204), claiming, "On September 11, 1992, this office was advised that the I. R. S. has now obtained the sought after information from other sources and, as a result, no longer desires that the summons be enforced.

Accordingly, we request that the court remand this case to the District Court so that the Government may move to vacate the order finding taxpayer in contempt of court." (App. L, A-203, Second Paragraph.) On Sept. 21, 1992, Plaintiff-Petitioner filed, **DEPENDANT -APPELLANT'S MOTION IN OPPOSITION TO PLAINTIFFS-APPELLEES' MOTION TO REMAND AND TO SUSPEND BRIEFING SCHEDULE PENDING DISPOSITION OF THE MOTION** (App. L,), asking for, "Full disclosure should be made to this honorable court as to how, and through whom, counsel's claim of "infused Knowledge" , came so miraculously on September 11, 1992."

REASONS FOR GRANTING THE WRIT

The decision of the United States Court of Appeals for the Fifth Circuit **REVERSING** the **ORDER** of the District Court **DENYING** Summary Judgment to the Defendants should be vacated, and The District Court original **ORDER DENYING**, Summary Judgment to the Defendants should pevail.

The opinion of The United States Court of Appeals for the Fifth Circuit as Documented in their April 29, 1992 was in error in the statement of the facts. Counsel for the Defendants misled the Court in stating that the Plaintiff-Petitoner had accepted responsibility for having made false material declarations before the district court during contempt proceedings regarding his record keeping. (A-153, First Paragraph, last sentence)

Counsel knew or should have known that this was not factual. It is of note that two of the Attorneys for the Tax Division, Department of Justice' who worked on the **MOTION TO REMAND AND TO SUSPEND BRIEFING SCHEDULE PENDING DISPOSITION OF THE MOTION.** (App. L, A-200-204). Namely, Gary R. Allen and Kevin M. Brown, also worked on the **BRIEF FOR THE APPELLANTS,** and **REPLY BRIEF FOR THE AP-**

PELLANTS, (5th Circ. No. 93-2371). Gary R. Allen was the signer of all three documents. Plaintiff-Petitioner these attorneys "knew or should have known they were misconstruing avers the facts before the court. States further, by painting the Petitioner's character in broad strokes, the Court assumes the worst, and the injury petitioner asserts in his complaint is not the reason for it being before the Court, infers, but rather, "he brought it on himself." (See App. I, A-145) Opinion by: Harlington Wood, Jr., Circuit Judge. "This suit against several I. R. S. Agents stems from years of the recalcitrant conduct of a tax protestor." Petitioner asks that this Court consider the instant case on it's merits, and not on the distortions of the Defendants', or the Defendants' Counsel. (See App. B, A-26 Last Paragraph) The Wood Court - "Under this tests the defense of Qualified Immunity would be defeated if on official 'knew or reasonably should have known that the action he took within the sphere of official responsibility would violate the constitutional right of the (Plaintiff), *or if he took the action with malicious intention to cause a deprivation of Constitutional rights or other injury.....*' " *Id.* 420 U.S. at 322, 95 S.Ct. at 1000-1001.751 F.2d 1472 (1985).

The Court of Appeals for the Fifth Circuit relied on Affidavits of the Defendants while ignoring the Declaration of the Plaintiff-Petitioner, thereby depriving the Plaintiff-Petitioner of the protection afforded him by the Fourth Amendment to the Constitution of the United States, and creating an untenable double standard.

"The very essence of civil liberty certainly consists in the right of every citizen to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163, 2 L.Ed. 60 (1803).

The prohibition against unreasonable searches and seizures is directed at govermental action. Absent the exclusionary rule, the Government would be free to undertake unreasonable searches and seizurs in all civil cases

without the possibility of unfavorable consequences." Pizzarello at 408 F.2d 586.

102 S. Ct. 2727 (1982) Justice Brennan: " I agree with the substantive standard announced by the Court today, imposing liability when a public official defendant 'knew or should have known' of the constitutionally violative effect of his actions. Ante, at 2737, 2739. This standard would not allow the official who actually knows that he was violating the law to escape liability for his actions,.." "...Thus the clever and unusually informed violator of constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies 'across the board' to all government officials performing discretionary functions.' I write separately only to note that given this standard, *it seems inescapable to me that some measure of discovery may be required to determine exactly what a public-official defendant did "know" at the time of his actions.*" 102 S. Ct. at 2739-2740.

In *United States v. Condo,* 782 F.2d 1502, 1505 (9th Circ. 1986) "The court held that an I. R. S. application for a Writ of Entry must be sufficiently specific in order to enable the Judge to make an independent determination of the existence of probable cause and to prevent agents from having uncontrolled discretion and, to rummage everywhere in search of seizabale items once legally in the premises."

"The Fourth Amendment prohibits search warrants that permit 'a general, exploratory rummaging in a person's belongings.' " *Coolidge,* supra 403 U. S. at 467. "The items to be seized must be described with sufficient particularity so that the executing officer is left with no discretion to decide what should be seized."

In the instant case the Court of Appeals for the Fifth Circuit erred in their review of the legal background for II. THE SEARCH, (A-149-150) (1) in allowing "a general, ex-

ploratory rummaging"—and, (2) "The items to be seized-',were not."—described with sufficient particularity—" See above two paragraphs.

Plaintiff-Petitioner avers that in the case at hand, the Agents Napveaux, McKinell, and others declared in their Affidavits, that they 'rummaged' indiscriminately. Agent McKinell's wild accusations of Mrs. Moore's conduct give credence to his calumnious intent, while he admits to sending files off to be copied without a search warrant. District I. R. S. Counsel, Stevens Moore, present to advise on the avoidance of legal problems, admits to hand leading Agent Felger through the intricacies of the paper work to get the **Writ of Entry** after he had his wish to name Mrs. Moore nominee on Feb. 12, 1990, "adopted by my office". (A-109,3. App. H) Was he present when Aide Bonvillain was copying the records sent to the I. R. S. office by Agent McKinell? *He was present* in Court on Feb. 21, 1990, and again on Mar. 7, 1990. Did he not hear the Plaintiff-Petitioner testify, that he had formed a corporation and would keep meticulous records, and the I. R. S. could dun his earnings. In the meeting of March 28, 1990 planning the seizure, did no one discuss that the Plaintiff-Petitioner had reiterated this intent to Agents Felger And Steve Fanguy in The Summons meeting of March 19, 1990. Did Agent McKinell not recall speaking to Charley Schrader the week following the March 19, 1990 meeting. Mr. Schrader had gone to the Houma I. R. S. office to further his invitation to Agent Felger that she critique the new record keeping of the newly formed medical corporation, and Mr. Schrader recalls speaking to Agent McKinell about what the Plaintiff-Petitioner would be allowed as living expenses. "Agent Cyrus Fanguy declares (App. 8,9, & 10.), in 8.," his frustration with Dr. Moore.", in 9., his work inventorying items in the kitchen "(that Mrs. Moore was undoubtably holding for Dr. Moore as his Nominee,-Comment added), and in 10., his discovery of the computer." Actually, this should not have been great a shock, as the computer was present when he participated in the Seizure of May 17, 1985.

The District Court properly found that there are, "material factual disputes regarding: (1) whether it was immediately apparent that the records were evidence of a crime; and (2) whether the defendants had a right of access to the records."

Plaintiff-Petitioner asks the Court to closely review the contrary of FACTS as considered by the District Court (App. C and G) opposed to the FACTS as listed in the 5th Circuit's Opinion (App. J)

"An appellate court, when reviewing the denial of a motion for summary judgment based on qualified immunity, is to accept the facts in the light most favorable to the non-moving party.' *Salas v. Carpenter,* 980 F.2d 299 (5th Cir. 1992; *Doe v. Taylor ind. School District,* 975 F.2d 137, 139, n.2 (5th Cir. 1992)

Rule 56 of the Federal Rule of Civil Procedure provides that disputed questions of fact ordinarily may not be decided on motions for summary judgment. Rule 56— "In determining whether summary judgment is proper, a court must ordinarily look at the record in the light most favorable to the party opposing the motion, drawing all inferences most favorable that party."

"And an official's good faith has been considered to be a question of fact that some courts have regarded as inherently requiring resolution by a jury," E. g., Landrum v. Moats, 576 F.2d 1320 1329 (CAB 1978); Duchesne v. Sugarmann, 566 F.2d 817, 832-833 (CA2 1977); cf. Hutchinson v. Proxmire, 443 U.S., at 120 n.9, 99 S. Ct., 2680, n.9

"In contrast with the thought processes accompanying "ministerial' tasks, the judgments surrounding discretionary action almost inevitably are influenced by the decisionmaker's experience, values, and emotions, These variables explain in part why questions of subjective intent so rarely can be decided by summary judgment." Harlow v. Fitzgerald 102 S. Ct. 2727 (1982).

The Court of Appeals for the Fifth Circuit did not consider the, **History of Injury**, the **Damages: Personal and Proprietary**, the Extensive **Exhibit List**, and the Comprehensive **Witness List**, all contained in the **MEMORANDUM TO SUBSTANTIATE INJURY AND DAMAGES** (App. B, A-6-40) attached to his **COMPLAINT FOR DAMAGES WITH REQUEST FOR JURY TRIAL.** (App. A, A-15).

The Court commented that Plaintiff-Petitioner should have obtained a Declaration from Charley Schrader. (App. J, A-154 FN 7) The court could hardly expect the Plaintiff-Petitiioner to obtain Declarations from his entire **Witness List**, (App. B, A-34-40) and the Plaintiff-Petitoner had every expectation that deposition and or Trial testimony would bear out the veracity of his **COMPLAINT.**

Petitioner asks This Court to closely review his Oral Argument (App. E, A-61-63) in it's consideration of this case.

CONCLUSION

This court should not allow the UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT TO **REVERSE** the ruling of the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA **DENYING** the **Defendants Second Motion for Summary Judgment.**

Respectfully submitted;

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Supreme Court, U.S.
FILED

NO. 94 213 JUL 27 1994

OFFICE OF THE CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1994

THOMAS A. MOORE, M.D.
Plaintiff-Petitioner

versus

BRENDA KELGER, ET AL
Defendant-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX VOLUME I

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102 pp

TABLE OF CONTENTS

Page

APPENDIX A - Complaint for Damages with Request for Jury Trial, January 29, 1992 ..... A-1

APPENDIX B - Memorandum to Substantiate Injury and Damages A-6

APPENDIX C - Minute Entry-Ruling of Judge Frederick Heebe, June 2, 1992 ..... A-41

APPENDIX D - Motion to Reconsider the Legality of Defendant's Entry into Plaintiffs Home, June 15, 1992 ..... A-50

APPENDIX E - Oral Statement in Support of Brief A-61

APPENDIX F - Minute Entry-Ruling of Judge Frederick Heebe, August 5, 1992 ..... A-64

APPENDIX G - Minute Entry-Ruling of Judge Frederick Heebe, March 26, 1993 ..... A-69

APPENDIX H - Affidavits A-81

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RECEIVED
JAN 29 '92

THOMAS A. MOORE, M.D. Plaintiff	)	
	)	
v.	)	ADVERSARY
	)	DOCKET NO. 92-0367
BRENDA FELGER, EUGENE NEPVEAUX, STEVE FANGUY, JOHN REEDY, MICHELLE BABIN, DINA BON-VILLAIN, ANGELA CAMILLE, TINA SAMANIE, CYRUS FANGUY, BILL ALGU, MACDUFFIE HERROD, DENISE ADAMS, HENRY McKINELL, JEFF DANIELS, ROBERT SINGLETON, REBEC-CA PATTON, JAMES M. VALENTINE, D. PHILLIP GUILLOT, LOUIS OUBRE, STEVENS MOORE, JILL ONDREJKO, AND JOE BURCHIS, Defendants	)	SECT. B. MAG. 6

A-2

COMPLAINT FOR DAMAGES WITH REQUEST FOR JURY TRIAL

The complainant, Thomas A. Moore, M.D., a resident citizen of Terrebonne Parish, Louisiana, appearing herein pro se, respectfully represents that:

1.

Brenda Felger, Steve Fanguy, John Reedy, Michelle Babin, Dina Bonvillain, Angela Camille, Tina Samanie, Cyrus Fanguy, Bill Algu, MacDuffie Herrod, Denise Adams, and Joe Burchis, on information and belief to be resident citizens of Terrebonne Parish, Louisiana; Eugene Nepveaux, on information and belief to be a resident citizen of Lafayette Parish, Louisiana; Henry McKinell, Jeff Daniels, Robert Singleton, and Rebecca Patton, on information and belief to be residents of East Baton Rouge Parish, Louisiana; James M. Valentine, D. Phillip Guillot, Louis Oubre, Stevens Moore, and Jill Ondrejko, on information and belief to be resident citizens of Orleans Parish, Louisiana, are made the defendants herein.

2.

At about 9:00 o'clock A.M. on March 29, 1990, defendant Felger accompanied by the other individual defendants illegally and unlawfully with force of arms entered complainant's home and place of abode in Terrebonne Parish, Louisiana within this District where they conducted a lengthy, exhaustive and destructive search of complainant's things, including his private books and papers, many of which they seized and carried away in con-

travention of the constitution and laws of the United States of America and of the State of Louisiana.

3.

In the alternative and in the event that this court should determine that the individual defendants' entry into his home and place of abode was lawful, the defendants exceeded the scope of the authority under which their entry was made in their lengthy, exhaustive and destructive search of complainant's things, including his private books and papers, many of which they seized and carried away in contravention of the constitution and laws of the United States of America and of the State of Louisiana.

4.

As a result of above described knowing, malicious, deliberate and intentional misconduct of the defendants and/or wilful and wanton misconduct of the defendants and/or grossly negligent misconduct of the defendants, and/or negligent misconduct of the defendants, your complainant sustained personal injuries in the form of severe emotional distress, anguish, stress, anxiety, insult, embarrassment, and humiliation. Additionally, your complainant sustained financial injury particularly but not limited to injury in the form of loss and damage to property, loss of earning power, loss of income, and attorney fees.

5.

Your complainant should recover compensation in the amount of One Million ($1.000.000.00) Dollars for per-

sonal injuries and One Million ($1,000,000.00) Dollars for proprietary damages,

WHEREFORE, your complainant prays that after all legal delays and due proceedings are had there be a judgment herein in favor of your complainant, Thomas A. Moore, M.D., and against the defendants Brenda Felger, Eugene Nepveaux, Steve Fanguy, John Reedy, Michelle Babin, Dina Bonvillain, Angela Camille, Tina Samanie, Byrus Fanguy, Bill Algu, MacDuffie Herrod, Denise Adams, Henry McKinell, Jeff Daniels, Robert Singleton, Rebecca Patton, James Valentine, D. Phillip Guillot, Louis Oubre, Stevens Moore, Jill Ondrejko, and J[illegible] Burchis, in solido, in the full sum of TWO MILLION DOLLARS AND NO/100 ($2,000,000.00), together with legal interest thereon from the date of judicial demand, until paid, and all costs of these proceedings, and further

Your complainant prays for a trial by jury, and further

Your complaint prays that, after all legal delays and due proceedings are had, there be a judgment herein in favor of the complainant, and against the defendants, in solido, in accordance with the above prayer, and further

Your complainant prays for all general and equitable relief to which he may be entitled in the premises.

/s/ Thomas A. Moore, M.D.

Thomas A. Moore, M.D.
Pro Se
502 Barrow Street
Houma, LA 70360
(504)876-2222

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Complaint for Damages with Request for Jury Trial* has been served upon Counsel of record as listed below, by depositing same in the U. S. Mail, postage prepaid, and properly addressed this 29th day of January, 1992.

Eneid A. Francis
Assistant United States Attorney
Hale Boggs Federal Building
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New Orleans, LA 70130

Jose Francisco De Leon
U. S. Department of Justice
P. O. Box 14198
Ben Franklin Station
Washington, DC 20004

/s/ Thomas A. Moore, M.D.

Thomas A. Moore, M.D.
Pro Se
502 Barrow Street
Houma, LA 70360

APPENDIX B

IN THE UNITED STATES
BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

IN RE:	)	
	)	
THOMAS A. MOORE, M.D.,	)	Case No.
	)	12071-TMB
	)	
Debtor	)	
	)	
THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. No. 91-1098-B
	)	
BRENDA FELGER, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM TO SUBSTANTIATE INJURY AND DAMAGES

MAY IT PLEASE THE COURT:

History of Injury:

On March 29, and continuing through March 30, the

defendants, Brenda B. Felger, et. al., entered the premises of Dorothy Lynn Moore to effect a tax levy pursuant to a *Writ of Entry* granted on March 22, 1990, by Magistrate A. Chasez. Agents Brenda B. Felger and Eugene E. Nepveaux forced entry to the residence by and with the accompanying armed criminal agents, D. Phillip Guillot and Louis Oubre. Upon entering the residence over the protests of Mrs. Moore, they showed Mrs. Moore the writ of entry. Mrs Moore summoned an attorney, Mr. Charley Schrader, who also protested the precipitous nature of the action. While Mr. Schrader was attempting to reach Magistrate Chasez to clarify the matter, Field Group Manager Henry McKinnell and the other agents arrived. On arrival, McKinnell ordered the other agents to proceed with the seizure. Agents spread through the residence in a Helter-Skelter fashion. When Mr. Schrader protested about agents going into files,[1] he was threatened with arrest. Mr. Schrader accordingly withdrew.[2]

The defendants proceeded to conduct an illegal search of private papers and records, some of which were records of Acadiana Psychiatric Services, A Medical Corporation; some were records of Acadiana Family Therapy Center, Inc., a corporation wholly owned by Mrs. Moore; some were purely personal records. Agents systematically searched through the Plaintiff's study, as well as his wife's separate study, opening all drawers and cabinets, and examined contents. They proceeded to remove those contents which appeared to be records, and made, or attempted to make, copies of various documents.[3] They then placed

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Footnote 1 on page A-16.
Footnote 2 on page A-16.
Footnote 3 on page A-16.

many of the documents and records in boxes, which they were in the process of sealing when the Plaintiff returned at approximatedly 3:00 PM with Mr. Schrader who vehemently objected, as records were not specified in the writ of entry.[4] Though a computer, computer desk, copy machine, desk chair, and other items had already been removed at that time, defendants Stevens Moore,[5, 11] District Counsel for the Internal Revenue Service, and Jill Ondrejko,[5, 11] of the Civil Division of the United States Attorney's Office, came to the residence. They subsequently contacted Frederick Boyd, Special Agent of the Criminal Division who was in New Orleans, and he, on the basis of information and assumptions related to him by Moore and Ondrejko, made en affidavit[6] and obtained a search warrant[7] which was signed by Magistrate I. Lemelle in New Orleans at 5:35 PM on 3/29/90. Agents then proceeded to remove the previously-sealed boxes of various records[7] from the residence.

Plaintiff alleges the original entry to the premises was illegal.[8] Even if the writ of entry were legal, the exhaustive search of documents[4] on the premises, and their subsequent seizure was illegal; therefore, the information upon which Boyd relied in his affidavit for a search warrant on the same day could not be used to establish probable cause for the issuance of a search warrant after the fact. Without the information from Moore and Ondrejko, there

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Footnote 4 on page A-16.
Footnote 5 on page A-17.
Footnote 6 on page A-17.
Footnote 7 on page A-17.
Footnote 8 on page A-17 - A-24.
Footnote 11 on page A-26.

was no cause, much less probable cause, to issue a search warrant. The search warrant was tainted by the affidavit[6] which contained facts learned as a result of the prior unconstitutional search.[4,9,10]

The Plaintiff has standing to assert his Fourth Amendment privilege.[10,11] The Plaintiff had a legitimate expectation of privacy in the property searched and seized. The Fifth Circuit in *U.S. v. Haydel*, 649 F.2d 140, 102 S.Ct.1721, stated that the factors to be considered in determining whether the defendant had a legitimate expectation of privacy were: 1) Whether the defendant had possessory interest in things seized or places searched; 2) Whether he had a right to exclude others from that place; 3) Whether he exhibited subjective expectation that it would remain free from governmental invasion; 4) Whether he took normal precautions to maintain privacy; and 5) Whether he was legitimately on the premises. *Id.* at 1155. Also see: *Rawlings v. Kentucky*, 448 U.S. 98 (1980).

The Plaintiff more than satisfies the above factors. The property seized by the IRS, the administrative records, i.e., patient files and billing information, were the property of the Corporations owned by the Plaintiff or his wife, or were personal records of the Plaintiff or his wife. He had a possessory interest in many of the things seized. They were kept in the course and scope of business. Furthermore, they were kept in the privacy of his wife's house

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Footnote 6 on page A-17.
Footnote 4,on page A-16.
Footnote 9 on page A-25.
Footnote 10 on page A-25.
Footnote 11 on page A-26.

and the place where he resided. They were stored in his study in drawers and in his desks or on top of them. They were to remain private. However, the house in which the government searched is not owned by Dr. Moore. It is owned by his wife and he has had unconditional access and use of the premises since their marriage in 1980. He lived there at 207 Oak Alley Drive, Houma, Louisiana 70360. In *Haydal, supra,* the Court found that a son had a legitimate expectation of privacy as to records which he kept at his parents house underneath their bed. He owned the records that were seized and he had unencumbered access to the house.

In *U.S. v. Showalter,* 858 F.2d 149 (3rd Cir. 1988), the Court recognized a defendant's expectation of privacy for purposes of the Fourth Amendment in the premises they leased from the owner. *Id.* at 151.

Pursuant to the foregoing facts and law, the Plaintiff has standing to assert his Fourth Amendment privilege.

The IRS may execute a levy by seizing a taxpayer's property in order to satisfy his indebtedness. However, the IRS cannot intrude into an area of privacy without violating the Fourth Amendment unless it obtains a valid search warrant. *G.M. Leasing Corp. v. U.S.,* 429 U.S. 338, 358, 50 L.Ed.2d 530, 87 S.Ct. 619 (1977) on *remand* 560 F2d 1011 (CA 10 Utah), *cert. den.* 435 U.S. 923, 98 S.Ct. 1485, 55 L.Ed.2d 516. A search warrant must be based on probable cause.

The Supreme Court in *G.M Leasing* stated, 'One of the primary evils intended to be eliminated by the Fourth

Amendment was the massive intrusion on privacy undertaken in the collection of taxes pursuant to general warrants and writs of assistance." 429 U.S. at 355. In the case at hand, the IRS did not obtain a valid search warrant. They entered the premises of Dorothy Lynn Moore to effect a tax levy pursuant to a writ of entry granted on March 22, 1990, by Magistrate Chasez. The Plaintiff contends that this writ of entry was granted without probable cause to substantiate its issuance.[12]

Plaintiff alleges that the defendants knew, or should have known, that their actions exceeded the mandates granted to them in the pursuit of their duties.[13] Plaintiff alleges that the defendants knew, or should have known, that their actions deprived him of his rights under the Fourth Amendment to the Constitution of the United States. This is particularly true as two of the defendants are attorneys,[11,13] and makes the action of all the defendants more egregious as they are sworn by their respective offices to defend that very Constitution. Plaintiff alleges further that the defendants knew, or should have known, that they failed to follow all the procedural administrative steps[14] which their agency has set up in order to avoid such conflict with the Constitutional rights of each individual citizen.[10]

Plaintiff finally alleges that the actions of the defendants were calculated, willful, and malicious, and were in-

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Footnote 10 on page A-25.
Footnote 11 on page A-26.
Footnote 12 on page A-26.
Footnote 13 on page A-26.
Footnote 14 on page A-27.

tended to injure him,[13] and anyone associated with him.[15] Their success in wreaking havoc in the personal and professional life of the Plaintiff is the basis for his claims of Injury and Damages.

Plaintiff respectfully asks the Court for the right to call witnesses as to facts to further substantiate the foregoing[11] and submits the attached Witness List.

DAMAGES:

Personal:

Plaintiff has sustained personal injuries of embarrassment, humiliation, emotional distress, and anguish.

The Plaintiff's wife has been unable to live in the residence at 207 Oak Alley Drive, Houma, Louisiana, since her hospitalization at Ochsner Hospital's Stress Unit on April 30, 1990. Since release from Ochsner with a diagnosis of "Post Traumatic Stress Disorder," the Plaintiff's wife has suffered from "psychic numbing" and has, as is common in the disorder, attenuated ability to express feelings of closeness and tenderness. Plaintiff has suffered the loss of love and affection and also endures the pain with which his wife continues to struggle through his empathy and natural protective feelings towards her. She continues to require professional treatment and chemotherapeutic agents and was hospitalized a second time in May of 1991

Footnote 11 on page A-26.
Footnote 13 on page A-26.
Footnote 15 on page A-28.

for the ongoing symptoms of this same disorder (See Exhibits #26, #27, and #28).

PROPRIETARY:

The unwarranted and unprecedented actions of the defendants in seizing from the residence certain tools of Acadiana Psychiatric Services, A Medical Corporation, necessary to conduct it's trade, i.e., patient records, office machines, etc., and the indiscriminate levying of all patients identified, far outweighed any collection purposes of the IRS.

Seizure of an automobile and operating funds and records from Acadiana Psychiatric Services, A Medical Corporation, made the Corporation unable to pay its contract employees, or hire full time employees, at a crucial period in its existence. Agent Felger was well aware of the Corporation and the reason for its inception.[16] Indeed, the Corporation was to be used to attain the very goals of accountability[16] and collection which the IRS purportedly sought. The successful operation of the Corporation represented the best opportunity for production and collection of revenues owed by it's stockholder, the Plaintiff. Seizing the assets and property of the Corporation on May 4[17] and May 7,[17] 1990, in a clandestine manner and without basis, has meant the loss of all contract workers, and the attendant public knowledge of the seizure, has crippled the ability of the Corporation to secure alternate professional personnel. As a result, potential earnings of

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Footnote 16 on page A-28.
Footnote 17 on page A-28.

the Corporation, which would have been available to the Plaintiff, have been forfeited.

As the principle revenue producer still remaining in the Corporation, funds generated by the Plaintiff's medical services rendered through the Corporation now represent it's total revenues.

The Plaintiff's medical services for the past five plus years have been increasingly rendered through his ability to practice at Bayou Oaks Hospital. The awareness of the Administration at Bayou Oaks Hospital of the climate produced by the unorthodox and malicious conduct of the defendants towards the Plaintiff made it doubtful to the Administration as to whether the Plaintiff could continue to maintain the work load which he had previously shouldered.

As a result, Administration redoubled their efforts to recruit additional psychiatrists. Addition of other psychiatrists, to which the hospital then had special obligations, has greatly reduced the plaintiff's patient base.

Graphs of patient hospital days under Plaintiff's care are included as Exhibit #31 to show monthly and quarterly what impact the defendants' actions had on Plaintiff's productivity. With the prospect of renewed collection efforts following dismissal of the Plaintiff's Chapter 11 protection,[18] Plaintiff fears a repeat of the decreased productivity as in the months following the seizures.

Footnote 18 on page A-29.

WHEREFORE, the Plaintiff prays that after all legal delays and due proceedings are had there be a judgment herein in favor of the Plaintiff, Thomas A. Moore, Sr., M.D., and against the defendants Brenda Felger, et. al., in solido, in the full sum of TWO MILLION DOLLARS AND NO/100 ($2,000,000.00) together with legal interest thereon from the date of judicial demand, until paid, and all costs of these proceedings and further,

Plaintiff prays for trial by jury and, further,

Plaintiff prays for all general and equitable relief to which he may be entitled in the premises.

Thomas A. Moore, Sr., M.D.
Pro Se
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[1] **Testimony of Brenda B. Felger, from Exhibit #1.**
Page 31, lines 6-9. "Q: Did each person have a particular duty? A: Not specifically, but to inventory."

Page 97, line 13 through Page 98, line 5. Q: On the day of the seizure, was there an assignment by you of the various agents to various portions of the house; you take this room, or you take that room? A: There may have been. Q: Would that have been a written assignment? A: No. Q: Do you recall whether in fact there was? Do you recall telling, let's say, Mr. Reedy; you go into that room over there; or, Mr. McKinnell, you go over there and do this? A: I'm sure I did that, yes. Q: But you don't recall specific directions given to anybody? A: No."

Testimony of Eugene E. Nepveaux, from Exhibit #2.
Page 228, lines 19-22. Q: Which room did you inventory; do you recall? A. I guess no specific one. I was in all of them I think."

[2] But one who demands admission under a claim of federal authority stands in a far different position. The mere invocation of federal power by a federal law enforcement official will normally render futile any attempt to resist an unlawful entry or arrest by resort to the local police; and a claim of authority to enter is likely to unlock the door as well. See Weeks v. United States, 232 U.S. 383, 386, 34 S.Ct. 341, 342, 58 L.Ed. 652 (1914); Amos v. United States, supra. "In such cases there is no safety for the citizen, except in the protection of the judicial tribunals, for rights which have been invaded by the officers of the government, professing to act in its name. There remains to him but the alternative of resistance, which may amount to crime." United States v. Lee, 106 U.S. 196, 219, 1 S. Ct. 240, 259, 27 L.Ed. 171 (1882). 91 S.Ct. 1999 (1971). 403 U.S. 394 at 2003-2004.

[3] **Testimony of Eugene E. Nepveaux, from Exhibit 2.**
Page 226, lines 4-19. Q: do you recall whether the Internal Revenue Service made copies of a document with the copy machine that was at the house the date of the seizure? A. The copy machine was laid out to the best of my recollection. We tried to get it working. I don't remember any copies being run off. We tried to get it to working and — I tried at one point. I forget exactly what I wanted to copy. I couldn't get it working. Q. You were looking at documents at that particular point? A. I suppose so. I don't remember what I was looking at."

[4] "2. Searches and Seizures: The Fourth Amendment confines an officer executing a search warrant strictly within the bounds set by the warrant. U.S.C.A.Const. Amend.4" 91 S. Ct., 1999 (1971), at 2000. 403 U.S. 388

Footnote 4 continued.

The IRS may execute a levy by seizing a taxpayer's property in order to satisfy his indebtedness. However, the IRS cannot intrude into an area of privacy without violating the Fourth Amendment unless it obtains a valid search warrant. *G.M. Leasing Corp. v. U.S.*, 429 U.S. 338, 358, 50 L.Ed.2d 530, 87 S.Ct. 619 (1977) on *remand* 560 F.2d 1011 (CA 10 Utah), *cert. den.* 435 U.S. 923, 98 S.Ct. 1485, 55 L.Ed.2d 516. A search warrant must be based on probable cause.

The Supreme Court in *G.M. Leasing* stated, "One of the primary evils intended to be eliminated by the Fourth Amendment was the massive intrusion on privacy undertaken in the collection of taxes pursuant to general warrants and writs of assistance." 429 U.S. at 355. In the case at hand, the IRS did not obtain a valid search warrant.

[5] **Testimony of Brenda B. Felger, from Exhibit #1.**
Page 31, line 24 through Page 32, line 22. "Q. Why was Mr. Stevens Moore there? A. Mr. Moore was available for the seizure, for any legal questions. Q. Is it normal for district counsel to be at a seizure of either a house or furniture? A. He came to the seizure later on for other reasons. Q. How about Miss Andreco? A. Same as Mr. Moore. Q. What time did Mr. Moore get there? A. I don't know. Q. Early afternoon, late afternoon? A. I don't know. Q. How about Miss Andreco? A. I don't know. Q. Had you requested that Mr. Moore or Miss Andreco be there? A. Be where? Q. At the seizure. A. No, I did not."

[6] **Exhibit #3.**

"There is a very simple connection line. Once it was established that charges had to be brought at any cost and despite everything, threats, violence, torture became inevitable."
From: *the Gulag Archipelago* by Solzhenitsyn. Page 98.

[7] **Exhibit #4: Search Warrant; Exhibit #5: Inventory List**

[8] In the affidavit (Declaration of Revenue Officer) attached to the motion to effect a tax levy, Brenda B. Felger states that the property at the home of Dorothy Lynn Moore is subject to seizure because she is the Plaintiff's wife and therefore his nominee. There is nothing in the affadavit to establish that his wife is in fact a nominee. The government, in its motion to execute and in the attached affidavit, just makes conclusory statements that Dorothy Lynn Moore is the nominee of the Plaintiff. There is no factual basis for this conclusion. In fact, there is

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Footnote 8 continued.

proof that she is not a nominee. The Plaintiff and his wife were married in 1980 whereby they established a separate property regime according to Louisiana law. The house in which they both reside was purchased by Mrs. Moore's separate funds and remained separate property. The various household goods and furnishings were owned by Mrs. Moore, not Dr. Moore. The government did not present sufficient information on which the magistrate could order a writ of entry based on probable cause. The property which the government specified in its application for the writ was not the property of the taxpayer and thus was not subject to the execution of a levy absent proof that his wife was his nominee. There must be probable cause to determine that the property belonged to the taxpayer. The lack of probable cause renders the writ of entry illegal.

Subsequent to the seizure, sworn deposition testimony given by Agent Felger (Exhibit 1) and Agent Nepveaux (Exhibit 2) appearing as representatives of the United States of America in a related case (Civil Action #90-1918) pending in the United States District Court, Eastern District of Louisiana, given no additional factual basis in support of the conclusion reached in Felger's affidavit. These depositions are offered as exhibits for their total content; however, pertinent excerpts have been listed.

..."slanderous declarations are often given the green light" in the Cheka. From: *The Gulag Archipelago* by Solzhenitsyn. Page 97.

Testimony of Brenda B. Felger, from Exhibit #1.
Page 20, line 7 through Page 21, line 18. "Q. Were you involved in the determination that Mrs. Moore was a nominee of Dr. Moore in any way? A. No. Q. A minute ago, you said that the request was in progress. What do you mean? At what stage was it when you took over? A. The nominee request was already forwarded. Q. It was already forwarded to who? A. District Counsel. Q. And when did that nominee request come back. A. The nominee request doesn't come back. Q. When did a response from counsel come bock? A. February. Q. February? A. 1990. Q. February what; do you recall? A. I don't remember. I don't recall. Q. Was it before or after you had been assigned the case? A. Just after, I believe. Q. Did you check to see after you had gotten the request back that all the proper procedural steps had been taken to obtain the request? A. No, I did not."

Footnote 8 continued.

Testimony of Brenda B. Felger, March 7, 1990, from Exhibit #3.
Page 8, lines 10-16, "Q. When did you first get involved in the case that we are here today for, United States of America versus Dr. Moore? A. I became involved as of last Wednesday when the previous revenue officer, Gene Navo, gave me a call and advised me that he was instructed to hand over the case to the local office in Houma and I being the senior revenue officer was the one would be handling the case."

Page 23, line 4 through Page 25, line 24. "BY MR. MAYHALL: Q. Were there facts set forth in the request to establish in the request to district counsel for permission to treat Mrs. Moore as a nominee for? MR. DELEON: I don't understand the question. I'm sorry. BY MR. MAYHALL: Q. Were there facts set forth? MR. DELEON: I have an objection to that. Whatever was said to district counsel is a matter that's covered by the attorney-client privilege. MR. MAYHALL: I'm not asking what was said. I'm asking whether there were facts set forth in the request. MR. DELEON: Whatever is included in that request is subject to attorney-client privilege. BY MR. MAYHALL: Q. When you received the permission from district counsel to go forward with the nominee assessment, that was in February after you had been assigned the case? A. I believe so, yes. Q. What were the steps that you took at that point. A. I prepared for the seizure. Q. Prepared for the seizure? A. Yes. Q. Did you issue any notices to Mrs. Moore? A. No, I did not. Q. Did you call Mrs. Moore and request her to turn over the property to you? A. No, I did not. Q. did you call Mrs. Moore or contact Mrs. Moore in any manner? A. No. I did not. Q. Why didn't you contact Mrs. Moore? A. Because it wasn't necessary. Q. And why wasn't it necessary? A. Because Dr. Moore had already been given all the notices necessary by law. Q. And you didn't believe that Mrs. Moore was entitled to notice? A. No, I did not. Q. Did you believe at that point, it was the Government's position at that point that all the property that Mrs. Moore possessed was in fact property that she was holding as a nominee for Dr. Moore? A. All the information I had at that time, yes, did indicate that. Q. Is the Government still of that opinion; that all the property that Mrs. Moore possessed, that she possesses or owns as the nominee of Dr. Moore? A. At this time, yes."

Page 60, lines 7-25. "Q. Did you independently review the facts and determine in your mind whether a nominee situation existed? A. I answered that question already, Mike. I told you what I relied on. Q. You relied upon the determination that had previously been forwarded to you, that a nominee situation existed? A. That is correct. Q. When

Footnote 8 continued.

you took over the file, the request for the determination was in progress. And you received it after you received the file? The determination came in after you had been assigned the file? A. That is correct."

Page 64, line 15 through Page 65, line 19. "BY MR. MAYHALL: It's my belief that I have a right to know what facts you as the supervising managing agent of the seizure relied upon in making the seizure. And if you did in fact rely, as you testified to, which I have no reason to doubt, that you relied upon the facts set forth in the determination and the facts that Mr. Nepveaux testified to yestserday, as I understand, that is your testimony? A. Yes, it is. Q. I have a right to know that. And if there are any other independent facts, it's my belief, not today, not what may be presented in court, not what may be discovered by your counsel, not what may be asked of Mrs. Moore, but of any facts that you relied upon or you knew about at the time of the seizure, it's my belief that I have a right to know. That is the question I'm asking you. As I understand, you're saying that there are no facts that you relied upon other than what either Mr. Nepveaux testified to or what was contained in the determination; is that correct' A. That is correct."

Page 143, lines 3-25. "Q. Why did the Government take the position that Mrs. Moore was a nominee rather than a transferee? MR. DELEON: I have the same objection. MR. MAYHALL: I think I have a right to know why the Government took the position, a nominee position rather than a transferee position. I believe I have a right to know that. and your continual reliance upon internal workings of the government is just simply not valid. For you to say that we have no right to discover the basis and the determination as to why the government took certain actions I don't believe is correct. Are you instructing the witness not to answer that? MR. DELEON: Yes.

Testimony of Eugene E. Nepveaux, from Exhibit #2.
Page 31, line 23, through Page 33, line 18. "BY MR. MAYHALL: Q: Just the facts. I understand that there is a determination. I would like the Government to tell the facts. That is all that I am asking for. MR. DELEON: To the extent that the witness is going to testify to certain facts that were submitted to District Counsel that is an attorney/client privilege matter. MR. MAYHALL: That is fine. I have asked what facts the Government has relied upon to show that Dorothy Lynn Moore is the nominee of Thomas A. Moore, Sr.? The witness has said the particular transfers. I would like to know what facts surround those transfers that the Government has used to determine that Dorothy

Footnote 8 continued

Lynn Moore is the nominee of Thomas A. Moore? A: I assume there are facts surrounding a certain transfer of property and when were the transfers—which pieces of property first? A. Well, we can start with the real estate I suppose. Q. What real estate are you talking about? A. 207 Oak Alley. Q. Describe the facts surrounding how Dorothy Lynn Moore is the nominee of Thomas A. Moore as to 207 Oak Alley, please? A. Well, all I am saying here is that I felt like a lien against Dr. Moore was effective against the property. That is really what I am saying. Whether that translate to some kind of nominee theory, I don't know."

Page 63, line 16 through Page 66, line 25. "Q. When the Government sends somebody a Notice of Levy and the person who is the recipient of the levy either doesn't respond or claims that they hold no property of the tax payer, what is the Government's normal procedure at that point? A. If we prove that there is some property that they are holding then we try to attempt for suit for failure to honor the levy. Q. Would you explain what that is? A. It is a procedure when we can identify property as being of the tax payer and file suit in a District Court to recover that specific property. Q. In connection with the property at 207 Oak Alley was that done in this case? That was not done in this case, was it? A. No. Q. Can you tell me why? A. No, I don't know why. Q. So the normal procedure when you send somebody a levy is if they fail to respond to it or claim that it is not the tax payer's property is to file a suit to enforce the levy? A. Yes. I think that had a lot to do with the facts we had on hand at the time. Q. Tell me those facts. Why was the normal procedure—is it your testimony that the normal procedure was not followed in this case. Why was the normal procedure not followed in connection with the seizure of the assets of 207 Oak Alley? MR. DELEON: I have an objection to—you seem to be talking about two different types of levy. BY MR. MAYHALL: Q. A levy of property of the tax payer in the hands of the third party. The witness has testified that when the property is not turned over by the third party or when the third party objects and that it is not property of the tax payer, that the normal procedure is to file a suit in federal District Court. *I would like to know why that procedure was not followed in ths case?* MR. DELEON: That procedure is applicable, for example, the IRS can also levy on a bank and the bank fails to honor the levy. That has nothing to do with the situation in this case. BY MR. MAYHALL: Q. The Notice of Levy provisions does not single out banks. There are specific rules for banks. *The witness here has testified that the normal procedure is when a levy is not honored is to file a suit to enforce the levy. I would like to know why that*

Footnote 8 continued

procedure was not followed in this case? MR. DELEON: You are mischaracterizing the witness's testimony. That is not what he stated. BY MR. MAYHALL: Let me ask you this, Mr. Nepveaux. Is it the Government's normal procedure when a third party does not turn over property which the Government asserts belongs to the tax payer to file a suit in Federal District Court to enforce the levy? A. Well, you used the word "normal." I meant generally. Generally, if we can identify property, yes."

Page 72, lines 7-21. "Q. Was there a notice sent to Mrs. Moore prior to the seizure of her assets as alleged nominee of Thomas A. Moore? A. A Notice of Levy, yes. Not a Notice of Seizure of physicial assets. Q. Was there a Notice of Levy sent to Mrs. Moore as the nominee of Thomas A. Moore as the alleged nominee of Thomas A. Moore prior to the seizure of her assets on March 29, 1990? A. I didn't send one. Q. *Did the Internal Revenue Service send one? A. Not to my knowledge.*"

Page 121, lines 1-5. "Q. As I recall, you said you never interviewed Mrs. Moore and asked her what duties she performed on behalf of Dr. Moore. A. No."

Page 163, line 18 through Page 164, line 17. "Q. So if I can understand your answer here, you are saying that the cash in the bank account at Progressive Bank and Trust Company and First National Bank in the account of Dorothy Moore were seized because the IRS did not believe that she did not have enough income reported on her income tax return to accumulate those sums? A. In general that is correct. *I don't have anything specific along that particular asset line or that line of assets. Q. Does the Government have anything specific on those specific assets? A. Not that I am aware of.* Q. In any event, that was not involved in your determination that she was the nominee as to those accounts? No other facts were involved other than what you just testified to? A. Well, on the issue of money, there were some monies that she collected in the past. It was my decision that whatever she owned Dr. Moore owned an interest in, if not full title."

Exhibit 7: Letter dated August 17, 1987.
(It was Mr. Nepveaux's *decision* in 1987, without investigation, that Mrs. Moore's separate property belonged to Dr. Moore. He never allowed his lack of evidence to sway him. despite the plethora of evidence to the contrary.)

Footnote 8 continued

"What prompted them all to slip into harness and pursue so zealously not truth but totals of the processed and condemned? Because it was most comfortable for them not to be different from the others. And because these totals meant an easy life, supplementary pay, awards and decorations, promotions in rank, and the expansion and prosperity of the Organs themselves."
From: *The Gulag Archipelago* by Solzhenitsyn. Page 146-147.

"No one dares check up on what you do. But no one is exempt from your checking up on him. And therefore, in dealing with ordinary so-called citizens, who for you are mere blocks of wood, it is altogether appropriate for you to wear an ambiguous and deeply thoughful expression. For, of course, you are the one—and no one else—who knows about the special considerations. And therefore you are always right."
From: *The Gulag Archipelago* by Solzhenitsyn. Page 149.

Testimony of Eugene E. Nepveaux, from Exhibit #2.
Page 207, line 19 through Page 210, line 3. "Q. Did you ever inquire of Mrs. Moore or Dr. Moore when she acquired the emerald? A. Other than the summons when she failed to appear, no. Q. Would it make any difference in your determination as to assets that Mrs. Moore acquired prior to January 1, 1980, be they by gift from Dr. Moore or inheritance from her mother and father. Would the fact that the acquisition was made prior to January 1, 1980 make any difference in your determination or the Government's determination that those assets acquired by Mrs. Moore and seized by the Internal Revenue Service on March 29, 1990, acquired by her prior to January 1, 1980, that she is holding those assets as the nominee for Tom Moore? MR. DELEON: I have an objection to the question on the grounds that you have picked a date which I don't know what the significance is in terms of—I don't know what January of 1980 has to do with anything. To that extent I have an objection. MR. MAYHALL: He still can answer the question. THE WITNESS: Well, it may or it may not. That was one of the purposes and reasons why I issued the summons back in mid 1989 for her to tell me when she acquired these assets. If she acquired them by gift from Dr. Moore than I have already told you before that I was not in the position to recognize any donation from him to her in the face of our lien or in the face of a tax liability. If any of these assets had been acquired by her from him in the face of tax liability then that would mean one thing. If she had acquired them by legacy from someone else, her grandmother

Footnote 8 continued

or great grandfather or somebody then that would mean something else. BY MR. MAYHALL: *Q. But you never took the time to find out? You just assumed and determined that everything she had belonged to Dr. Moore? A. I don't know if assumption is the correct word. I suppose by the intent of your question I would have to say, yes.*"

Page 221, line 14 through Page 223, line 24. "Mr. MAYHALL: I believe the factual basis has been set out. The IRS seized assets that Mrs. Moore acquired prior to December 31, 1979. We were alleging that in our complaint. BY MR. MAYHALL: Q. I am asking, Mr. Nepveaux, if in his determination that Mrs. Moore was holding assets as the nominee for Thomas Moore, does that apply to those assets that Mrs. Moore acquired prior to December 31, 1979? A. *In this case?* Q. *In this case, yes, sir.* A. *Yes, sir.* Q. How does that apply to those assets? What right does the Government have to those assets that Mrs. Moore acquired prior to December 31, 1979? A. There is money flowing between them in 1982, for example. Debt repayment between themselves. Q. For the years that— A. Who knows who owns what in this case. Q. For the years that there is no Federal tax liability, for those years prior to December 31, 1979, what is the basis of the Government saying that the assets acquired by Mrs. Moore wither from her husband or any other third party that Mrs. Moore is holding those assets as the nominee of Dr. Moore? I will give you a further basis for it. There are no accruals of tax liability at that time; is there? Everything through 1979 has been paid in full; is that not correct? A. Was paid in full through 1985— Was paid in full in June 1985, May of 1985. Q. May 31st of 1985, I believe it was. *What is the basis for the Government to claim a lien on property that Mrs. Moore acquired prior to December 31, 1979 or the basis for the Government saying that Mrs. Moore is the nominee of Thomas A. Moore for property that she acquired prior to December 31, 1979? MR. DELEON: To the extent that you know. THE WITNESS: I guess I really don't know. BY MR. MAYHALL: Q. Does anybody in the Government know to you knowledge? A. I don't know the answer to that question either.*

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[9] The IRS may execute a levy by seizing a taxpayer's property in order to satisfy his indebtedness. However, the IRS cannot intrude into an area of privacy without violating the Fourth Amendment unless it obtains a valid search warrant. *G.M. Leasing Corp. v. U.S.*, 429 U.S. 338, 358, 50 L.Ed.2d 530, 87 S.Ct. 619 (1977) on *remand* 560 F2d 1011 (CA 10 Utah), *cert. den.* 435 U.S. 923, 98 S.Ct. 1485, 55 L.Ed.2d 516. A search warrant must be based on probable cause.

The Supreme Court in *G.M. Leasing* stated, "One of the primary evils intended to be eliminated by the Fourth Amendment was the massive intrusion on privacy undertaken in the collection of taxes pursuant to general warrants and writs of assistance." 429 U.S. at 355. In the case at hand, the IRS did not obtain a valid search warrant.

In *U.S. v. Showalter,* 858 F.2d 149 (3rd Cir. 1988), the Court recognized a defendant's expectation of privacy for purposes of the Fourth Amendment in the premises they leased from the owner. *Id.* at 151.

This case, however, while civil in nature is not between private parties and there is no analogous independent deterrents to, or remedies against government violations of the fourth Amendment. The prohibition against unreasonable searches and seizures is directed at governmental action. Absent an exclusionary rule, the government would be free to undertake unreasonable searches and seizures in all civil cases without the possibility of unfavorable consequences." *Pizzarello* at 408 F.2d 586.

[10] The Fourth Amendment provides that: "The rights of people two be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." 91 S.Ct. 1999 (1971) at 2001. 403 U. S. 390.

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163, 2 L.Ed. 60 (1803). Having concluded that petitioner's complaint states a cause of action under the fourth Amendment, supra, at 2001-2004, we hold that petitioner is entitled to recover money damages for any injuries he has suffered as a result of the agents' violation of the Amendment. 19 S. Ct. 1991 (1971). 403 U.S. 398 at 2005.

"It guarantees to citizens of the United States the absolute right to be free from unreasonable searches and seizurs carried out by virtue of federal authority. 403 U.S. 390 at 2002.

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[11] 102 S. Ct. 2727 (1982) Justice Brennan: "I agree with the substantive standard announced by the Court today, imposing liability when a public official defendant 'knew or should have known' of the constitutionally violative effect of his actions. Ante, at 2737, 2739. This standard would not allow the official who actually knows that he was violating the law to escape liability for his actions,..." "...Thus the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies 'across the board' to all 'government officials performing discretionary functions.' I write separately only to note that given this standard, *it seems inescapable to me that some measure of discovery may sometimes be required to determine exactly what a public-official defendant did 'know' at the time of his actions.*" 102 S. Ct. at 2739-2740.

[12] **Testimony by Eugene E. Nepveaux, from Exhibit #2.**
Page 223, line 7 to 24.
"What is the basis for the Government to claim a lien on property that Mrs. Moore acquired prior to December 31, 1979 or the basis for the Government saying that Mrs. Moore is the nominee of Thomas A. Moore for property that she acquired prior to December 31, 1979? MR. Delon; To the extent that you know. THE WITNESS: I guess I really don't know. BY MR. MAYHALL: Q. Does anybody in the Government know to you knowledge? A. I don't know the answer to that question either.

[13] "Referring both to the objective and subjective elements, we have held that qualified immunity would be defeated if an official '*knew or reasonably should have known* that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with *malicious intention* to cause a deprivation of constitutional rights or other injury...' " Ibid. (emphasis added). 102 S. Ct. 2727 (1982) at 2736-2737.

The Wood court divided the qualified immunity defense into objective and subjective elements. The objective elements involves an official's knowledge of and respect for basic constitutional rights. The subjective component refers to 'permissible intentions.' Under this test, the defense of qualified immunity was defeated if an official 'knew or reasonably should have known that the action he took within the sphere of official responsibility would violate the constitutional right of the [plaintiff], or if he took the action with malicious intention to cause a deprivation of constitutional rights or other injury...' " Id. 420 U.S. at 322, 95 S.Ct. at 1000-1001. 751 F.2d 1472 (1985).

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[14] **Testimony of Eugene E. Nepveaux, from Exhibit #2.**
Page 63, line 16 through Page 66, line 25. **"Q. When the Government sends somebody a Notice of Levy and the person who is the recipient of the levy either doesn't respond or claims that they hold no property of the tax payer, what is the Government's normal procedure at that point? A. If we prove that there is some property that they are holding then we try to attempt for suit for failure to honor the levy. Q. Would you explain what that is? A. It is a procedure where we can identify property as being property of the tax payer and file suit in a District Court to recover that specific property. Q. In connection with the property at 207 Oak Alley was that done in this case? That was not done in this case, was it? A. No. Q. Can you tell me why? A. No, I don't know why. Q. So the normal procedure when you send somebody a levy is if they fail to respond to it or claim that it is not the tax payer's property is to file a suit to enforce the levy? A. Yes. I think that had a lot to do with the facts we had on hand at the time. Q. Tell me those facts. Why was the normal procedure— is it your testimony that the normal procedure was not followed in this case. Why was the normal procedure not followed in connection with the seizure of the assets of 207 Oak Alley? MR. DELEON: I have an objection to— you seem to be talking about two different types of levy. BY MR. MAYHALL: Q. A levy of property of the tax payer in the hands of the third party. The witness has testified that when the property is not turned over by the third party or when the third party objects and that it is not property of the tax payer, that the normal procedure is to file a suit in Federal District Court.** ***I would like to know why that procedure was not followed in this case?*** **MR. DELEON: That procedure is applicable, for example, the IRS can also levy on a bank and the bank fails to honor the levy. That has nothing to do with the situation in this case. BY MR. MAYHALL: Q. The Notice of Levy provisions does not single out banks. There are specific rules for banks.** ***The witness here has testified that the normal procedure is when a levy is not honored is to file a suit to enforce the levy. I would like to know why that procedure was not followed in this case?*** **MR. DELEON: You are mischaracterizing the witness's testimony. That is not what he stated. BY MR. MAYHALL: Let me ask you this, Mr. Nepveaux. Is it the Government's normal procedure when a third party does not turn over property which the Government asserts belongs to the tax payer to file a suit in Federal District Court to enforce the levy? A. Well, you used the word "normal." I meant generally. Generally, if we can identify property, yes."**

See all excerpts from Exhitit #1, Testimony by Brenda B. Felger, listed on pages 9, 10, and 11 of footnotes.

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[15]Methods used by the Organs:

5. Preliminary humiliation - a single purpose: to dishearten and humiliate.
9. Playing on one's affection for those one loved.

From: *The Gulag Archipelago* by Solzhenitsyn. Pages 104-105, 106.

[16]**Testimony from Exhibit #3.**
Page 45, Lines 11-13. "THE WITNESS (Dr. Moore): It is because we have formulated the situation I am incorporating, I am going to keep meticulous records and they can come dunn my salary."

In the meeting with Agent Felger and Agent Steve Fanguy of March 19, 1990, Plaintiff's attorney, Mr. Schrader, gave Felger full details of the formation of Acadiana Psychiatric Services, A Medical Corporation, and invited her agency to participate in formulating the type records which would satisfy their needs.

Felger had several meetings with Mr. Mayhall, Mr. Schrader, and Claude Bergeron, CPA, during the month of April, 1990, in reference to what would be required by the Corporation to satisfy all concerned.

Felger has, in the interim, examined the accounting techniques enlisted by the Corporation and found them to be comprehensive and verifiable.

[17]**Windsor Court Documents**
Exhibit #8: Felger's Declaration faxed to Holiday Inn 23:09 5/4/90.
Ignores Corporation as separate judicial entity.

Exhibit #9: Ordrejko's Exparte Motion faxed to Holiday Inn 23:10 5/4/90.
Makes six conclusions of fact on which there is no basis.

Exhibit #10: Order of Entry - Magistrate Chasez faxed to Holiday Inn 23:12 5/4/90.

Exhibit #11: Notice of Levy
To Windsor Court Hotel 5/5/90.

Exhibit #12: Notice of Seizure to: Thomas A. Moore, M.D., changed to Windsor Court Hotel 5/4/90.
Ignores fact that property was that of Acadiana Psychiatric Services, A Medical Corporation. Agents McKinnell, Nuss, et.al., and Ondrejko

seized the property of the Corporation about midnight after which they came to the room the Plaintiff was occupying to announce their deed. This timing can only have been to humiliate Plaintiff who had come to New Orleans the evening of 5/4/90 to attend his daughter's graduation from L.S.U. Medical School the next day.

On May 7, 1991, agents seized funds of the Corporation in Progressive Bank & Trust in Houma, Louisiana.

[18] Acadiana Psychiatric Services, A Medical Corporation, has a Wrongful Levy Suit pending in U. S. Bankruptcy Court for the Eastern Division of Louisiana, as it was forced to seek protection of Chapter 11, Case #90-12072-TMB, by the malicious acts of these agents in the excessive exercise of their discretionary powers.

Plaintiff's plan for reorganization was rejected on September 10, 1991. The persons rejecting this plan were either defendants in this damage suit or their attorneys. Plaintiff has cause to question the objectivity of these persons as pressure was brought by J. F. DeLeon, in a meeting with Plaintiff and his attorney, Mr. Ron Hof, on September 5, 1991, for Plaintiff to dismiss his damage complaint.

Mr. DeLeon argued that Plaintiff's suit would not receive favorable action as, "The Judge works for the Government."

EXHIBIT LIST

Exhibit #1: Deposition of the United States of America by its representative, Brenda B. Felger, regarding Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana, taken on Wednesday, October 17, 1990.

Exhibit #2: Deposition of The United States of America by its representative, Eugene E. Nepveaux, regarding Civil Action No. 90-1989, United States District Court, Eastern District of Louisiana, Taken on Tuesday, October 16, 1990.

Exhibit #3: Transcript of Hearing Before The Honorable Robert F. Collins. Volume II. Docket No. 89-2451, United States District Court, Eastern District of Louisiana, March 7, 1990.

Exhibit #4: Affidavit of Criminal Agent Frederick Boyd, March 19, 1990.

Exhibit #5: Search Warrant, March 29, 1990.

Exhibit #6: Inventory List of Records.

Exhibit #7: Letter from Barry Melancon dated August 17, 1987.

Exhibit #8: Declaration of Revenue Officer Brenda B. Felger, Faxed to Holiday Inn 23:09 on 5/4/90.

Exhibit #9: Exparte Motion of the United States of America to Enter Premises to Effect a Tax Levy, by Jill Ondrejko, Faxed to Holiday Inn 23:10 on 5/4/90.

Exhibit #10: Order for Entry on Premises tso Effect Tax Levy, by Magistrate Chasez, 5/4/90.

Exhibit #11: Notice of Levy

Exhibit #12: Notice of Seizure

Exhibit #13: Deposition of Dorothy Lynn Moore, taken on Wednesday, October 17, 1990. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #14: Deposition of Dorothy Lynn Moore, taken on Tuesday, March 26, 1991. Civil Action No. 90-1918. United States District Court, Eastern District of Louisiana.

Exhibit #15: Deposition of Thomas Aquinas Moore, Sr., M.D., taken on Wednesday, January 23, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #16: Deposition of Thomas Aquinas Moore, Sr., M.D., taken on Thursday, January 24, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #17: Deposition of Margaret M. Heaslip, taken on Tuesday, April 19, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #18: Deposition of Cyrus J. Fanguy, taken on Wednesday, April 10, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #19: Deposition of John A. Byrd, taken on Wednesday, April 10, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #20: Deposition of Robert Cournoyer, taken on Tuesday, April 9, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #21: Deposition of Thomas Aquinas Moore, Sr., M.D., taken on Tuesday, February 5, 1991. Case #90-12071-B. Chapter 11. United States Bankruptcy Court, Eastern District of Louisiana.

Exhibit #22: Deposition of Thomas Aquinas Moore, Sr., M.D., taken on Wednesday, February 6, 1991. Case #90-12071-B. Chapter 11. United States Bankruptcy Court, Eastern District of Louisiana.

Exhibit #23: Deposition of Charley J. Schrader, Jr., taken on Tuesday, February 5, 1991. Case #90-12072-TMB. Chapter 11. United States Bankruptcy Court, Eastern District of Louisiana.

Exhibit #24: Deposition of Brenda B. Felger, regarding Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana, taken on Tuesday, May 29, 1990.

Exhibit #25: Transcript of Hearing Before The Honorable Robert F. Collins. Civil Action No. 89-2451, United States District Court, Eastern District of Louisiana, May 16 and May 30, 1990.

Response to Rule to Show Cause. Civil Action No. 89-2451.

The Government's Brief in Support of Its Motion to Hold The Respondents in Contempt. (Includes Brenda B. Felger's Affidavit of May 23, 1990). Civil Action No. 89-2451.

Exhibit #26: Medical Report - Harold T. Conrad, M.D., F.A.P.A. Dated October 3, 1991.

Exhibit #27: Psychiatric Evaluation by Richard F. Mestayer, III, M.D.

Exhibit #28: Medical Report by Dian Denney, M.D., dated September 27, 1991.

Exhibit #29: Bergeron & Company Report for Thomas Aquinas Moore, M.D.; Bankruptcy Case No. 90-12071. Summarized Cash Flow Projections August 1, 1991 through December 31, 1996 (with accountants' compilation report thereon).

Exhibit #30: Bergeron & Company Report for Acadiana Psychiatric Services, A Medical Corporation; Bankruptcy Case No. 90-12072. Summarized Cash Flow Projections August 1, 1991 through December 31, 1996 (with accountants' compilation report thereon).

Exhibit #31: Graphs showing Patient Hospital Days and supporting documentation.

Witness List

Thomas A. Moore, Sr., M.D. Testimony will include, but not be limited to:

- facts on property of Lynn H. Moore, how she acquired her property, and offer supporting evidence.
- his knowledge and recall of conduct of defendants at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990.
- his knowledge of conduct of defendants Felger, Ondrejko, and McKinnell at seizure at Windsor Court on May 4 and 5, 1990.

Margaret M. Heaslip. Testimony will include, but not be limited to:

- her knowledge of Mrs. Moore's property.

Eugene Nepveaux. Testimony will include, but not be limited to:

- basis of his conclusions as to nominee determination;
- his collection actions regarding the Plaintiff from 1987 to present;
- his presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990.
- his meeetings with Charley Schrader and Barry Melancon in 1987

Brenda B. Felger. Testimony will include, but not be limited to:

- basis for her conclusions of Mrs. Moore as nominee;
- deviations from normal procedure for seizure;
- her presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990;
- her role in assessing the reorganizational plan of the Plaintiff;
- basis for seizure of property from Acadiana Psychiatric Services, A Medical Corporation, and factual basis for her Declaration of May 4, 1990;
- her knowledge of contents of 207 Oak Alley Drive prior to seizure;
- her testimony of her presence, duties, and activities on May 17, 1985, and May 31, 1985:
- her knowledge of the formation of Acadiana Psychiatric Services, A Medical Corporation;
- her examination and understanding of records seized from 207 Oak Alley Drive, Houma, Louisiana, on March 29, 1990.

Criminal Agents Louis Oubre and Phillip Guillot. Testimony will include, but not be limited to:

- their presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1991.

Jill Ondrejko, Civil Division of the United States Attorney's Office.
Testimony will include, but not be limited to:

- facts relating to her presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Loui-

siana, on March 29 and 30, 1990;
- facts relating to statements in her Exparte Motion of May 4, 1990;
- facts relating to her presence, duties, and activities in the seizure of property of Acadiana Psychiatric Services, A Medical Corporation, on May 4 and 5, 1990;
- facts concerning switch from Magistrate Wynne to Magistrate Chasez in July of 1989.

Stevens Moore, District Counsel for the Internal Revenue Service. Testimony will include, but not be limited to:
- facts relating to his presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990;
- facts relating to his participation in meetings with Mr. Hof regarding Plaintiff's Chapter 11 reorganization;
- his role in determining that Mrs. Moore is Plaintiff's nominee and factual basis for same.

Field Manager Henry McKinnell. Testimony will include, but not be limited to:
- his presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990;
- his presence, duties, and activities in the seizure of property of Acadiana Psychiatric Services, A Medical Corporation, on May 4 and 5, 1990;
- factual basis for his approval of actions taken by IRS agents against Mrs. Moore as nominee.

Enid Francis, Civil Division of the United States Attorney's Office.
Testimony will include, but not be limited to:

- her activities and role in relation to the Plaintiff's Chapter 11 reorganization;
- her defense representation of Ms. Ondrejko in this action;
- possible conflicts of interest.

J. F. DeLeon, Attorney, U.S. Department of Justice, Trial Attorney, Tax Division. Testimony will include, but not be limited to:

- his activities and role in relation to the Plaintiff's Chapter 11 reorganization;
- his request to represent various defendants in this case;
- possible conflicts of interest.

Owens Dahl, Medical Office Consultant, President
Claude Bergeron, CPA
Mary Chauvin, Secretary to Harold Conrad, M.D.
Celeste Chabert, Utilization Review Coordinator, Bayou Oaks Hospital
Mary Chilek, Office Manager, Haydel Medical & Surgical Clinic
Brenda Shoultz, Business Office Manager, Bayou Oaks Hospital
Charley J. Schrader, Jr., Attorney
Debra Serpas, Medical Secretary
Beth Duet, MSW, BCSW, contract worker for Acadiana Family Therapy Center, later for Acadiana Psychiatric Services, A Medical Corporation
Janet Buescher, MSW, BCSW, contract worker for Acadiana Family Center, later for Acadiana Psychiatric Services, A Medical Corporation

Doug French, MSW, contract worker for Acadiana Family Therapy Center, later for Acadiana Psychiatric Services, A Medical Corporation

Wallace E. Smith, MSW, Ph.D., Former Administrator, Bayou Oaks Hospital

All above testimony will include, but not be limited to:

- their contacts with Mrs. Moore to verify her function as office manager for the Plaintiff and later to Acadiana Psychiatric Services, A Medical Corporation

Wallace E. Smith, MSW, Ph.D., Former Administrator, Bayou Oaks Hospital

Harold Conrad, M.D., F.A.P.A, Medical Director, Bayou Oaks Hospital

Don F. Carlos, M.D., President, Medical Staff, Bayou Oaks Hospital

Charles Montiero, Comptroller, Bayou Oaks Hospital

All above testimony will include, but not be limited to:

- the impact of agents' unorthodox actions on Plaintiff's hospital-associated productivity.

Mr. Charley J. Schrader, Jr., Attorney. Testimony will include, but not be limited to:

- meetings with Mr. Nepveaux in relation to Mrs. Moore in 1987;
- subsequent meetings with Mr. Nepveaux;
- his presence and observation of activities during seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29, 1990;
- his knowledge of organization of Acadiana Psychiatric Services, A Medical Corporation, and its purpose;
- his contacts and dealings with Brenda Felger in association with collection actions against Plaintiff.

Mr. Barry Melancon, CPA. Testimony will include, but not be limited to:

- meetings, contacts, and correspondence with Mr. Nepveaux in 1987.

Mr. Claude Bergeron, CPA. Testimony will include, but not be limited to:

- knowledge of Acadiana Family Therapy Center, Inc.; knowledge of Acadiana Psychiatric Services, A Medical Corporation.

Rt. Rev. Monsignor Edmund Moore. Testimony will include, but not be limited to:

- his knowledge of loans to Plaintiff and their purpose;
- his knowledge of ownership of residence and contents at 207 Oak Alley Drive, Houma, Louisiana;
- his knowledge of loan to Acadiana Psychiatric Services, A Medical Corporation.

Mrs. Pat Jordan, neighbor, 209 Oak Alley Drive on March 29 and 30, 1991. Testimony will include, but not be limited to:

- her observance of conduct of agents during seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990.

Mr. Ron Hof, Bankruptcy Attorney. Testimony will include, but not be limited to:

- facts of meetings with Internal Revenue Service and Justice Department personnel in behalf of Plaintiff for reorganization plan.

Mark Stein, Tax Attorney. Testimony will include, but not be limited to:

- facts relating to Dorothy Lynn Moore's employment (1985)
- facts relating to information given to the Government for preparation of Plaintiff's tax returns, 1980 through 1984.

David Bernstein, Tax Attorney. Testimony will include, but not be limited to:

- facts relating to information given to the Government for preparation of Plaintiff's tax returns, 1980 through 1984.

Cyrus Fanguy, Internal Revenue Service Agent. Testimony will include, but not be limited to:

- facts relating to summons issued regarding Plaintiff (1985)
- facts relating to summons issued regarding Dorothy Lynn Moore (1985)
- facts relating to summons issued regarding Plaintiff's children:
  Thomas A. Moore, Jr., Erin E. Moore, and Kelly K. Moore.
- facts relating to meetings with Dorothy Lynn Moore and Paul Cordes, Tax Attorney (1985)

APPENDIX C

MINUTE ENTRY
HEEBE, J.
JUNE 2, 1992

FILED
JUN 2 '92

THOMAS MOORE, M.D. — CIVIL ACTION

VERSUS — NO. 92-0367

BRENDA FELGER, ET AL. — SECTION "B"

This matter came on for hearing on a previous day on the motion of defendants, Brenda Felger, et al., to dismiss pursuant to Federal Rule of Civil Procedure 12(b) or in the alternative, for summary judgment pursuant to Federal Rule of Civil Procedure 56(b), and for sanctions pursuant to Federal Rule of Civil Procedure 11. The court, having heard the arguments of counsel, and having studied the legal memoranda submitted by the parties and the law, is now fully apprised in the premises and ready to rule.

Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim be, and the same is DENIED.

Date of Entry Jun - 3 1992

IT IS FURTHER THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(5) for insufficiency of service of process, and 12(b)(2) for lack of personal jurisdiction, be, and the same is hereby, DENIED WITHOUT PREJUDICE to defendants to file a motion under Federal Rule of Civil Procedure 4(j).

IT IS FURTHER THE ORDER OF THE COURT that the alternative motion of defendants, Brenda Felger, et al., for summary judgment pursuant to Federal Rule of Civil Procedure 56(b) be, and the same is hereby, GRANTED only as to the issue of whether defendants legally entered plaintiff's premises.

IT IS FURTHER THE ORDER OF THE COURT that the alternative motion of defendants, Brenda Felger, et al., for summary judgment pursuant to Federaal Rule of Civil Procedure 56(b) be, and the same is hereby, DENIED WITHOUT PREJUDICE as to the issues of qualified immunity and prescription.

IT IS FURTHER THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., for sanctions pursuant to Federal Rule of Civil Procedure 11 be, and the same is hereby, DENIED.

REASONS

This is a suit for damagaes filed on January 29, 1992 by a delinquent tax payer against certain IRS agents and other federal defendants. Plaintiff, Thomas A. Moore, M.D. ("Moore"), is indebted to the United States in excess of

$1 million for federal income tax liabilities for the years 1980-94 and 1986-89. In an attempt to collect these tax liabilities, the United States filed an *ex parte* motion seeking authorization for IRS agents to enter Moore's home and effect a tax levy. The *ex parte* motion listed various tangible property items such as furniture, jewelry and a stereo which the IRS maintained were subject to the tax levy. On March 22, 1990, Magistrate Chasez signed an order for Entry on Premises to Effect Tax Levy which authorized any revenue officer or other authorized employee of the IRS to enter Moore's home "to make such search as is necessary in order to inventory, levy, and seize property and rights to property belonging to said tax debtor to which the federal tax lien applies."

IRS agents entered the home on March 29, 1990. According to plaintiff, the agents not only seized his furniture, stereo etc., but searched through his private files and records and began to place many of these documents in boxes. Plaintiff's attorney, Charley Schraeder, objected to this, arguing that Moore's records were not specified in the order for entry. As a result, plaintiff claims that IRS lawyer, Stevens Moore, and U.S. Attorney, Jill Ondreko, came to the residence and contacted Stephen Boyd, an IRS special agent for the criminal division. Boyd obtained a search warrant from Magistrate Lemelle which authorized Boyd to search and seize accounts receivable from Moore's medical practice, and/or patient billing information.

Plaintiff alleges in the complaint that: 1) defendant, Brenda Felger, and others, illegally and unlawfully entered his home and conducted a lengthy, exhaustive and destruc-

tive search of his things, including his private books and papers, many of which they seized and carried away in contravention of the constitution, and the laws of the United States and Louisiana, and 2) in the event that the Court determines that the defendants' entry into Moore's home was lawful, Moore argues that the agents exceeded their scope of authority because their search and subsequent seizure of his files and records was not authorized by the order for entry signed by Magistrate Chasez, and thus, the information upon which Boyd relied to obtain his search warrant could not be used to establish probable cause.

Defendants moved to dismiss plaintiff's complaint or in the alternative, for summary judgment, arguing that it is undisputed that the defendants' entry into the Moore residence was legal, and that the action is barrd by the defendants' qualified immunity. Defendants argue further that Moore's action has prescribed, and that Moore has not effected service of process on defendants, Michelle Babin, Robert Singleton, Rebecca Patton and James Valentine.

1. *Legality of Defendants' Entry into Moore's Home*

Section 6331 of the Internal Revenue Code authorizes the IRS, within 10 days after notice and demand, to collect taxes by levy upon all property and rights to property belonging to a person who neglects to pay any tax. 26 U.S.C. § 6331. In order to satisfy the Fourth Amendment, entry into a private home by IRS agents to conduct a search and seizure pursuant to Section 6331 must be authorized by a valid court order. G.M. Leasing Corp. v. U.S., 429 U.S. 338, 358 (1977); In re Campbell, 761

F.2d 1181, 1186 (6th Cir. 1985).

The procedure for obtaining an order authorizing entry is summary in nature. *Campbell*, 761 F.2d at 1186. Judges are to determine whether the application and supporting affidavit show probable cause to enter, search for, and levy against personal property in aid of summary collection of assessed and unpaid taxes. U.S. v. Shriver, 645 F.2d 221, 222 (4th Cir. 1981).

Here, the defendant IRS agents entered Moore's home on March 29, 1990 pursuant to an Order for Entry on Premises to Effect Tax Levy signed by Magistrate Chasez which stated that there was probable cause to believe that property and rights to property subject to a tax levy were located on the premises. This order was issued pursuant to an *ex parte* motion filed by the United States. Attached to this motion was the declaration of defendant revenue officer, Brenda Felger, setting forth that: 1) the tax liabilities of Moore had been assessed; 2) notice of the assessment and demand for payment had been given to Moore; 3) Moore had failed to pay the tax liabilities; 4) assets subject to seizure were believed to be located on the premises, and 5) Moore refused to give consent to enter the premises in order to effect the tax levy. The tax levy was also attached to the motion.

Pursuant to the above undisputed facts, the court concludes that as a matter of law, the government's *ex parte* motion established probable cause that property subject to the tax levy was located at Moore's residence, and thus, the entry into Moore's home by defendants pursuant to the Order for Entry on Premises to Effect Tax

Levy was in compliance with the Fourth Amendment. *Campbell*, 761 F.2d at 1186-87; *Shriver*, 645 F.2d at 222. Therefore, the Court will grant defendants' alternative motion for summary judgment as to the issue whether defendants' entry into plaintiff's residence was legal.

II. *Qualified Immunity of the Federal Defendants*

The Court concludes, however, that defendants have not established at this time that they are entitled to dismissal or summary judgment on the basis of qualified immunity. Qualified immunity shields conduct not violative of clearly established constitutional or statutory rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Austin v. Borel, 830 F.2d 1356, 1358 (5th Cir. 1987). Here, plaintiff argues that despite his protests, the agents conducted a search through his records and files which was not authorized by, and beyond the scope of, the order for entry. Further, plaintiff argues that the subsequent search warrant which authorized the search and seizure of his records was not valid because the information Agent Boyd relied on to obtain the warrant was obtained illegally. Plaintiff maintains that the defendants, several of whom are lawyers, should have known that their search and seizure violated his rights under the Fourth Amendment.

The Court determines that these allegations are sufficiently fact specific to defeat, at this stage in the proceedings, a motion to dismiss or for summary judgment on the grounds of qualified immunity. Geter v. Fortenberry, 849 F.2d 1550. 1553 (5th Cir. 1988). Therefore, the Court will deny defendants' motion to dismiss for failure to

state a claim, and will deny without prejudice, defendants alternative motion for summary judgment on the issue of qualified immmunity.

III. *Prescription*

In determining whether this action is timely, the Court looks to state law. Gaspard v. U.S., 713 F.2d 1097, 1102 n. 11 (5th Cir. 1983). Here, the prescriptive period is one year from the date of injury and damage, as provided in Article 3492 of the Louisiana Civil Code. Defendants entered Moore's residence on March 29, 1990, and this suit was not filed until January 29, 1992. Therefore, defendants argue that plaintiff's action has prescribed.

However, Moore, who had petitioned for bankruptcy, timely filed a complaint similar to the one in this case, in bankruptcy court as an adversary proceeding. Moore subsequently voluntarily dismissed his petition in bankruptcy which resulted in the concomitant dismissal of his related adversary proceeding.[1] Under Louisiana law, an interruption of prescription results from the fling of suit in a competent court. However, interruption is considered never to have occurred if plaintiff abandons or voluntarily dismisses his suit. La. C.C. Art. 3463. Here, defendants have not addressed the issue of whether plaintiff's adversary proceeding interrupted prescription, or whether plaintiff is held to have voluntarily dismissed his adversary proceeding when he voluntarily dismissed his related bankruptcy case. Therefore, the Court will deny without

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[1] The bankruptcy court denied Moore's motion to retain jurisdiction over the adversary proceeding. Moore has appealed this ruling.

prejudice, defendants' alternative motion for summary judgement on the issue of prescription.

IV. *Service of Process*

Defendants argue that Michelle Babin, Robert Singleton, Rebecca Patton and James Valentine have not been served, and therefore, plaintiff's claims against them should be dismissed for insufficiency of service of process under Federal Rule of Civil Procedure 12(b)(5) and for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). Plaintiff maintains that all defendants were served by mail, and that he has received a return of summons from 18 of the defendants, including Michelle Babin. Plaintiff claims he will attempt another form of service on Singleton, Patton and Valentine. The Court concludes that dismissal under rules 12(b)(5) and 12(b)(2) is not appropriate at this time and will deny defendants' motion to dismiss on this issue without prejudice to file a motion under rule 4(j) for failure to effect service within 120 days after the filing of the complaint.

Finally, the Court does not find that sanctions against plaintiff under Federal Rule of Civil Procedure 11 are warranted, and will deny defendants' motion on this issue.

Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim be, and the same is hereby, DENIED.

IT IS FURTHER THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(5) for insufficiency of service of process, and 12(b)(2) for lack of personal jurisdiction, be, and the same is hereby, DENIED WITHOUT PREJUDICE to defendants to file a motion under Federal Rule of Civil Procedure 4(j).

IT IS FURTHER THE ORDER OF THE COURT that the alternative motion of defendants, Brenda Felger, et al., for summary judgment pursuant to Federal Rule of Civil procedure 56(b) be, and the same is hereby, GRANTED only as to the issue of whether defendants legally entered plaintiff's premises.

IT IS FURTHER THE ORDER OF THE COURT that the alternative motion of defendants, Brenda Felger, et al., for summary judgment pursuant to Federal Rule of Civil Procedure 56(b) be, and the same is hereby, DENIED WITHOUT PREJUDICE as to the issues of qualified immunity and prescription.

IT IS FURTHER THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., for sanctions pursuant to Federal Rule of Civil Procedure 11 be, and the same is hereby, DENIED.

/s/ Frederick J Heebe

UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

RECEIVED
JUN 15 '92

IN RE: THOMAS A. MOORE, M.D., Plaintiff vs. BRENDA FELGER, ET AL., Defendants	Civil No. 92-0367 Sec. "B" Mag

MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS' ENTRY INTO PLAINTIFF'S HOME

Now into Court comes Thomas A. Moore, M. D., Plaintiff, in proper person, to respectfully ask the Court to reconsider the legality of the entrance into his home by the Defendants on March 29, 1990 as ruled upon in the Minute Entry of this Honorable Court on June 2, 1992.

Plaintiff bases this request on the following:

Plaintiff alleges that the Writ of Entry granted by Magistrate Chasez was issued on the basis of Exparte

Motions which relied on several Affidavits (Declaration of Revenue Officer) which contained numerous statements which had no basis in fact.

In the several Affidavits Agent Felger named items which she claimed were the-"property of the said tax debtor, through his nominee, Dorothy Lynn Moore, (hereafter Mrs. Moore), to which the federal tax lien applies, and to which levy may be made—"

items listed were:

- "a 1980 Rolls Royce"

- "a 1982 GMC VAN"

- "a 1989 Toyota Supra"[1]

- "various household goods and furnishings, including but not limited to, a computer system, a sofa, various living and dining room furniture, a china hutch, and bedroom furniture."

- "various jewelry items including but not limited to a large opal, small opal, ruby, and an emerald."

Nothing in these Affidavits established in any way that Mrs. Moore was in fact, the nominee of the Plaintiff as to any of the items listed. The government in its motion to execute, just made conclusory statements that Mrs. Moore was the nominee of the Plaintiff. Agent Felger asserts as

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Footnote 1 on page A-57.

her reason for failure to give notice, "The tax debtor, through his counsel has even expressed the fact that leaving the United States might be an option to resolving this case.—No requests for consents have been requested of the Nominees for Thomas A. Moore, Sr. M. D. because it is believed that the tax debtor and/or his Nominees would move any and all assets beyond the reach of the Government,—" Plaintiff challenges the truth of the former assertion and the logic of the second.[2]

Subsequent to the entry and seizure, Mrs. Moore filed a Wrongful Levy Suit. Agent Brenda Felger and Agent Eugene Nepveaux appeared at depositions to give testimony as to all the facts relied upon by the government to conclude that Mrs. Moore was the nominee of the Plaintiff as to the items listed above (as well as a plethora of other items seized). Agent Felger's Testimony (Exhibit #1) revealed that she made no attempt to establish a basis for her conclusion that Mrs Moore was the nominee of the Plaintiff. She further stated she made no efforts to verify in any way the basis relied upon by District I R S Counsel in it's recommendation to proceed on a nominee theory. Her testimony in Judge Robert Collins court on March 7, 1990 (Exhibit #3) revealed she was placed on the case the previous Wednesday, February 28, 1990, when she replaced Agent Nepveaux who had been on the case since April, 1987.

Agent Felger admitted she had no special training in Nominee or Transferee theory and had but five years experience, yet she proceeded to file a lien against the pro-

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Footnote 2 on page A-57.

perty of Mrs. Moore on March 14, 1990, after only two weeks on the case. This is particularly noteworthy in the face of the deposition testimony of Agent Nepveaux (Exhibit #2), an Agent with twenty years experience. In his testimony (Page 63, line 16 through page 66, line 25), Mr. Nepveaux admits there was severe departure from the normal procedure taken when the I R S feels that a third party is holding the property of a taxpayer. When asked. "Q.— That was not done in this case, was it? A. **No.** Q. Can you tell me why? A. **No, I don't know why.** He further answered as follows (Page 223, line 7 to 24): Q. What is the basis for the Government to claim a lien on property that Mrs. Moore acquired prior to December 31, 1979 or the basis for the Government saying that Mrs. Moore is the nominee of Thomas A. Moore for the property she acquired prior to December 31, 1979? A. **I guess I really don't know.** Q. Does anybody in the Government know to your knowledge? A. **I guess I don't know the answer to that question either.** When asked specificly about facts relied on in the assertion that Mrs. Moore's house was at issue (Page 31, line 23, through Page 33, line 18), Mr. Nepeaux answered, "Well, all I am saying here is that **I felt like** a lien against Dr. Moore was effective against the property. That is really what I am saying. ***Whether that translates into some kind of nominee theory, I don't know.***" [3,4]

Plaintiff avers that if Agent Nepveaux had no knowledge of what constituted a nominee theory he could hardly have made a meaningful recommendation to District Counsel. Further, if Agent Felger conducted no investiga-

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Footnote 3 on page A-57.
Footnote 4 on page A-58.

tion of her own, on what did she rely for the allegations made in her Affidavits. She could only rely on the opinion of District I R S Counsel. Plaintiff believes the opinion of District I R S Counsel given to Agent Felger that she had the authority to proceed with the nominee theory against the property of Mrs. Moore was an administrative decision and the facts relied upon by District Counsel should be subject to Discovery.[4,6] These decisions are not protected under the Attorney-Client Privilege because District Counsel is not acting as the Attorney for the Agents, but in this case is only a link in the chain of procedural steps. Indeed, if those decisions made by Counsel in any administrative capacity shielded those who acted on them, it would open a Pandora's box of mischief and mayhem.[5]

Plaintiff avers that it is exactly that mischief and mayhem that prevailed in this case. It is the belief which is the basis of his complaint that the actions were, "knowing, malicious, deliberate, and intentional misconduct—and/or—willful and wanton misconduct—and/or—grossly negligent misconduct—of the defendants—". Plaintiff avers that discovery or testimony at trial is the only manner in which to discover what thinking and communication took place between the principle defendants who took part in formulating those documents which abused the Court's power through the tainted *Writ of Entry*. Defendants Brenda Felger, her supervisor, Henry McKinell, Eugene Nepveaux, Stevens Moore, and Jill Ondrejko all were in

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Footnote 4 on page A-58.
Footnote 5 on page A-58.
Footnote 6 on page A-60.

position to recognize that they were in uncharted waters in seeking their Writ of Entry not against the Plaintiff, but against Mrs. Moore as his Nominee.[3 & 6]

Plaintiff avers that it is germane to point out that Mrs. Moore's Wrongful Levy Suit ended in settlement when her counsel asked to be removed from her case after she had been drained of her financial resources and she was emotionally exhausted. After she was subjected to over 400 pages of deposition testimony (Exhibits 13 & 14) to substantiate her claims, and her eighty year old mother was called to give corroborating testimony (Exhibit 17), did the Government state to her mother that Mrs. Moore could, "pick up her grandfather's gold-handled unbrella" which, though engraved, "Samual Baker Heaslip, April 7, '06" the Government had seized and held as property she was holding for the Plaintiff. The government returned to her the majority of the items which were so rudely torn from her, including her household furniture, all of her jewelry, her GMC Van, her family heirlooms, her silver baby cup engraved "Lynn", as well as numerous items of women's apparel, which had been seized in the "feeding frenzy" which took place under this *Writ of Entry* on March 29, & 30, 1990.

In light of the above, the Plaintiff asks the Court to consider:
The government did not present sufficient information on which the Magistrate could order a *Writ of Entry* based on probable cause. The property which Agent Felger specified in the application for the Writ of Entry was not subject to

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Footnote 3 on page A-57.
Footnote 6 on page A-60.

the execution of a levy absent proof that Mrs. Moore was the nominee of the Plaintiff. There must be probable cause to determine that the property belonged to the Plaintiff. The lack of probable cause renders the *Writ of Entry* illegal.

Wherefore the plaintiff prays that the Court will reconsider and find that the Defendants obtained the Magistrate's concurrance through subtrafuge and misrepresentation thereby tainting the *Writ of Entry* which made their entry into his home illegal.

Respectfully submitted:

/s/ Thomas A. Moore, M.D.

Thomas A. Moore, M.D.
Pro Se
502 Barrow Street
Houma, Louisiana 70360
Phone: (504) 876-2222

FOOTNOTES

1 Attesting to Agent Fleger's lack of investigation and knowledge is the fact that the Toyota Automobile was not the property of Mrs. Moore or the Plaintiff, but leased from Toyota Motor Leasing. As such, it had no seizure value and should have been exempt from seizure. When evidence was given as to these facts to Agent Nepveaux during the seizure, he paused, and then stated that, "This seizure covers even the use of things." After Toyota Motor Leasing requested the release of their property from Agent Felger, she only agreed to an administrative release if the company agreed to terminate the lease.

2 Plaintiff catagoricly denies ever having considered or verbalizing any intent to flee the United States. He has been engaged in the practice of medicine in New Orleans and Houma continuously since 1963. He holds no License to practice medicine in any other state or country. He was 55 years of age at that time Agent Felger, in her fantasy, feared he would escape her efforts.

As to moving assets should notice be given, it strains the imagination to concoct a scenerio in which the Plaintiff or Mrs. Moore would move a house and all it's furnishings, various motor vehicles which must be registered and insured, and all the other items beyond the reach of the Government and still benefit in any way from their ownership.

3 102 S.Ct. 2727 (1982) Justice Brennan: "I agree with the substantive standard announced by the Court today, imposing liability when a public official defendant 'knew or

should have known' of the constitutionally violative effect of his actions. Ante, at 2737, 2739. This standard would not allow the official who actually knows that he was violating the law to escape liability for his actions,..." "...Thus the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies 'across the board' to all 'government officials performing discretionary functions.' I write separately only to note that given this standard, *it seems inescapable to me that some measure of discovery may sometimes be required to determine exactly what a public-official defendant did 'know' at the time of his actions.*" 102 S.Ct. at 2939-2740.

4 Agent Nepveaux, in the summer of 1987, had several meetings with an attorney and an accountant who were representing Mrs. Moore after Agent Nepveaux had voiced his personal theory that he believed *all* of Mrs. Moore's property was really the property of the Plaintiff. After presentation of evidence and discussion of the facts, (including taking Agent Nepveaux through the house owned by Mrs. Moore), the C.P.A., Mr. Barry Melancon, wrote to Agent Nepveaux (Exhibit #7) stating that representatives of Mrs. Moore would want to speak with District I R S Counsel in the event any of Mrs. Moore's property was at issue, and asked for a listing of any such property. Agent Nepveaux never responded to that letter.

5 In 1985, Agent Cyrus Fanguy sent out in excess of eleven hundred (1100) Summonses in relation to his work on Plaintiff's account. Summonses were sent on the Plaintiff to every Physician and every Attorney listed in the telephone directories of Houma, Thibodaux, and Raceland; to every

Psychiatrist listed in the Greater New Orleans telehpone directory, and to all insurance companies doing business in the State of Louisiana.

Summonses were sent to every Bank and S & L listed in the telephone directories of Houma, Thibodaux, Raceland, and Greater New Orleans on the Plaintiff, his three children individually, and Mrs. Moore.

Agent Fanguy was questioned about those summons sent out on Mrs. Moore in Deposition April 10, 1991 (Exhibit #18). From Page 24, line 22 through Page 29, line 17, Agent Fanguy was questioned as to the propriety of his action, and whether he had any reasonable expectation of gaining information, and in fact, had he learned anything as a result; e.g.,;

Page 27, line 13 through Page 29, line 8:

Q. What was your basis in sending these summonses out to all these various financial institutions, because I think if you look at the summonses, every one of them is to a financial institution.

A. Well, it would be to discover if there was some information that was releavant to the taxpayer, M

Q. Did you have any facts that led you to believe that these institutions, these financial institutions, might have facts in connection with your audit of Mrs. Moore's income tax return?

A. Well, let me say this: *These summonses were isued under the instruction of our district counsel,* so I would not feel like I would be able to respond

completely to your question without discussing it with the individuals who were also involved in issuing these summonses.

This was not a unilateral thing that just I did. There were other people involved in the issuance of the summonses.

Q. Is it usual to send out this many summonses in an audit of a case?

A. I don't know if you can qualify "usual" or not.

Q. Well, let me ask you this: *In your 20 years of experience as an examination agent, have you ever sent out this many summonses in the examination of one individual taxpayer?*

A. I don't know if that's a fair question or not. *I mean, I do what I'm instructed to do.* If I'm instructed to issue two summonses, I will issue two summonses. If I'm instructed to issue 200, I'll issue 200. I don't think that's a fair question, because *I'll do what I'm told.*

6 "This case, however, while civil in nature is not between private parties, and there is no analogous deterrents to, or remedies against, Government violations to the Fourth Amendment. The prohibition against unreasonable searches and seizures is directed against governmental action. Absent an exclusionary rule, the government would be free to undertake unreasonable searches and seizures in all civil cases without the possibility of unfavorable consequences," *Pizzarello* at 408 F.2d 586

APPENDIX E

ORAL STATEMENT IN SUPPORT OF BRIEF

I am not here today to argue the points advanced in my brief. I will let it stand on it's own merit.

What is far more basic here is our heritage of ideas and ideals. I do not pretend to be acquainted with all the works of those whose thoughts and writings have g[illegible] rise to the glorious values to which we are heirs in our Western culture.

The ideas of which I speak have to do with how individuals should best behave toward one another in a just society. These ideas cut across lines of nationality race, gender, time, and even creed. I know of nowhere that one may find a better summation of these ideas and ideals than that which our forefathers left us in "The Constitution of the United States" and the "Bill of Rights"

Lincoln borrowed from Christ's teaching, that, "a house divided against itself cannot stand", when he stated that our Nation "Could not survice half slave, and half free. I would carry that a step further today and state," Our Nation cannot survive a system, which, for the sake of expediency, creates a code to measure those who labor for the government differently than those whose labors support the government.

The exercise of power has long been known to have an intoxicating effect on even the wisest among us, and our forefathers saw fit to set up a system of checks and

balances to minimize the human tendency that some among know better than our fellows what is best for them.

The most moderating branch of our bodies of government is the Judicial Branch. Alexander Solz Stated, "Perhaps the last fruit of a civilized society is a G O O D Judicial System.' "

The Defendants and the Government are asking the Court today to condone the actions of Certain Individuals who work for the Government, who, claiming to need the Court's power and authority to expedite their goals, have clearly acted in a manner which denies others of the Rights the Court is sworn to protect. The Defendants/Government is asking the Court at best to be Schizophrenic, or at worst, to simply cozy up to it in bed, and look the other way, and no one will be the worse for it. No one that is, except the individuals whose Rights the Court is sworn to protect.

In this case, the Defendants/government has the effrontery to ask the Court to consider the fact that Mrs. Dorothy Lynn Moore, as an innocent third party against whom the Defendant government employees proceeded so callously, should have had to bear the burden of proof that she owned her own baby cup.

They ask the Court to sanction by silence the fact that the Court's power was gained by deceit and manipulation.

If the Defendants or the Government feels slandered by these allegations of the Plaintiff, then all the more reason they should want to prove themselves innocent by addressing the allegations in open Court.

Dorothy Lynn Heaslip Moore is no longer my wife. We were divorced in December, 1991. Having been so traumatized and fearing more of the same it she remained close to the Plaintiff, she had to distance herself to the detriment of us both.

She stated to me her abiding fear, "*They* can do *anything* they want."

I ask the Court today to demonstrate that the founding fathers wrote only one Constitution to apply to all of us. I ask the Court to affirm that the Bill of Rights, particularly the Fourth Amendment applies to the Plaintiff, and the Defendants' actions should stand inspection in the light of day.

Let Dorothy Lynn Moore, as well as all others who may live in fear, know that under our Constitution not even the mightiest, "Can do anything they want" to even the weakest among us.

APPENDIX F

MINUTE ENTRY
HEEBE, J.
AUGUST 5, 1992

FILED
AUG 5 '92

THOMAS A. MOORE, M.D. CIVIL ACTION

VERSUS NO. 92-367

BRENDA FELGER, ET AL. SECTION "B"

This cause came on for hearing on July 22, 1992 on the motion of defendants, Robert Singleton, Rebecca Patton, and James Valentine, to dismiss pursuant to Fed.R.Civ.P. 4(j). There being no opposition by *pro se* plaintiff, Thomas A. Moore, M.D., to the motion of defendants, Robert Singleton and Rebecca Patton, to dismiss, the Court granted the motion as to those two defendants.

However, at the hearing on the motion, plaintiff represented to the Court that defendant, James Valentine, had been personally served on July 21, 1992. The Court thus took Mr. Valentine's motion to dismiss under advisement.

The Court, having heard the arguments of counsel and having studied the legal memoranda submitted by

DATE OF ENTRY AUG 5 1992

defendants, and the exhibits filed by plaintiff, including the return of summons on defendant, James M. Valentine, is now fully advised in the premises and ready to rule. Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendant, James Valentine, to dismiss pursuant to Rule 4(j), be, and the same is hereby DENIED.

REASONS

Plaintiff, Thomas A. Moore, M.D., commenced this action by filing a *pro se* complaint on January 29, 1992. Defendants, Robert Singleton, Rebecca Patton, and James Valentine, subsequently filed a motion to dismiss on the ground that plaintiff had not effected service of process and, therefore, the Court lacked personal jurisdiction over them. On June 3, 1992, the Court entered an order denying the motin to dismiss without prejudice to file a motion under Rule 4(j).

On June 18, 1992, defendants filed a motion to dismiss pursuant to Rule 4(j). Defendants allege that more than 120 days have elapsed since the filing of plaintiff's complaint, and plaintiff has not effected service of process upon them. Defendants thus contend that this action should be dismissed pursuant to Rule 4(j).

Plaintiff has not filed a written opposition to defendants' motion to dismiss. However, at the hearing on July 22, 1992, he orally opposed Mr. Valentine's motion to dismiss. Plaintiff explained to the Court his "conscientious efforts" to serve Mr. Valentine, and informed the Court

that Mr. Valentine was finally served the previous day.

On July 28, 1992, plaintiff filed his return of service on Mr. Valentine and his other unsuccessful mailings to this defendant to document his attempts at service. The return of the summons shows that Mr. Valentine was personally served on July 21, 1992.

Fed.R.Civ.P. 4(j) states, in pertinent part:

> If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

Rule 4(j) mandates dismissal upon a finding that service has not been made on the defendant within one hundred and twenty days unless "good cause" is shown." McDonald v. United States, 898 F.2d 466, 467 (5th Cir. 1990). "Good cause" requires "some showing of 'good faith . . . and [a] reasonable basis for noncompliance within the time specified." *Id., citing* Winters v. Teledyne, 776 F.2d 1304, 1306 (5th Cir. 1985).

It is clear that service was not made upon Mr. Valentine within 120 days after the filing of the complaint. Thus this Court must decide whether plaintiff has shown good cause why such service was not made timely.

According to the exhibit filed in the record as Document # 25, plaintiff first mailed the summons and complaint to Mr. James Valentine, Field Branch Chief, 501 Magazine Street, New Orleans, Louisiana 70130, postmarked February 10, 1992. This mailing was returned to sender based on "insufficient address."

On February 24, 1992, the summons and complaint were delivered by certified mail to the following address: James Valentine, Field Branch Chief, Internal Revenue Service, 7th Floor, 501 Magazine Street, New Orleans, Louisiana 70130. The return receipt was signed by Eugene E. Thompson, Jr.

Plaintiff testified at the hearing that Mr. Valentine never responded to that summons, and so he attempted personal service on Mr. Valentine through a process server. On April 29, 1992, a process server attempted to serve Mr. Valentine at the I.R.S. office in New Orleans, The process server noted that service was not made because Mr. Valentine "retired from I.R.S."

Plaintiff explained to the Court that he did not have another address for Mr. Valentine until "very recently when in communication with one of defendants' attorneys, he found his home address."

On July 21, 1992, the process server served Mr. Valentine personally at 7321 Briar Heath Drive, New Orleans, Louisiana 70128.

Based on the diligent attempts at service by this *pro se* plaintiff, and the exhibits filed in support to document

these efforts, the Court finds that plaintiff has shown "good faith" and a "reasonable basis" for not serving Mr. Valentine within the one hundred and twenty-day period. *McDonald*, 898 F.2d at 467. Thus, the Court concludes that good cause has been shown in this case to extend the time to effect service.

Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendant, James Valentine, to dismiss pursuant to Rule 4(j), be, and the same is hereby DENIED.

/s/ Frederick J Heebe

UNITED STATES DISTRICT JUDGE

APPENDIX G

MINUTE ENTRY
HEEBE, J.
MARCH 26, 1993

FILED
MAR 29 '93

THOMAS A. MOORE, M.D. CIVIL ACTION

VERSUS NO. 92-0367

BRENDA FELGER, ET AL. SECTION "B"

This cause came on for hearing on a previous day on the motion of defendants, Brenda Felger, Steve Fanguy, John Reedy, Michelle Babin, Dina Bonvillain, Angela Camille, Tina Samanie, Cyrus Fanguy, Bill Algu, MacDuffie Herrod, Denise Adams, Joe Burchis, Eugine Napveaux, Henry McKinell, Jeff Daniels, James M. Valentine, Phillip Guillot, Louis Oubre, Stevens Moore, Jill Ondrejko, for summary judgment on the ground that this action is barred by defendants qualified immunity.

The Court, having heard the arguments of counsel and having studied the legal memoranda submitted by the parties, rules from the bench, DENYING defendants' motion for summary judgment.

A denial of a motion for summary judgment for want

Date of Entry MAR 29 1993

of qualified immunity fits within the small class of interlocutory decisions qualifying for appellate review. Mitchell v. Forsyth, 472 U.S. 511, 527 (1985). Therefore, this Court is issuing this minute entry stating its reasons for denying defendants' motion for summary judgment. Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, Steve Fanguy, John Reedy, Michelle Babin, Dina Bonvillain, Angela Camille, Tina Samanie, Cyrus Fanguy, Bill Algu, MacDuffie Herrod, Denise Adams, Joe Burchis, Eugene Nepveaux, Henry McKinell, Jeff Daniels, James M. Valentine, Philip Guillot, Louis Oubre, Stevens Moore and Jill Ondrejko, for summary judgment, be, and the same is hereby DENIED for the following reasons.

REASONS

This is a suit for damages filed on Jaunuary 29, 1992 by a delinquent taxpayer against certain IRS agents and other federal defendants. Plaintiff, Thomas A. Moore, M.D. (hereinafter "Moore"), is indebted to the United States in excess of $1 million for federal income tax liabilities for the years 1980-84 and 1986-89. In an attempt to collect these tax liabilities, the United States filed an *ex parte* motion, listing various tangible property items such as furniture, jewelry and a stereo, seeking authorization for IRS agents to enter Moore's home and effect a tax levy on those items. On March 22, 1990, Magistrate Judge Alma Chasez signed an Order for Entry on Premises to Effect Tax Levy which authorized any revenue officer or other authorized employee of the IRS to enter Moore's home "to make such

search as is necessary in order to inventory, levy, and seize property and rights to property belonging to said tax debtor to which the federal tax lien applies."

IRS agents Steve Fanguy and Cyrus J. Fanguy entered Moore's home on March 29, 1990. The agents seized Moore's furniture, stereo, and other items listed in the order, for entry. In addition, the agents found some private files and records. The agents contend that they believed the records were evidence of perjury because the agents assert that plaintiff, while under oath, had denied the existence of the records. Group Manager Henry F. McKinell ordered the agents to seize the records, and Steve Fanguy began to remove the records. Defendants justify removal of the records as evidence of a crime found in plain view during a lawful search.

Plaintiff argued with the agents then and still contends that he never denied that the records existed, and that, therefore, the records were not evidence of the crime of perjury. Plaintiff also contends that the records do not fall within the plain view exception to the warrant requirement.

At some point during or after the removal of the records from the plaintiff's residence, McKinell contacted Stevens Moore, an IRS lawyer, and Jill Ondrejko, an Assistant U.S. Attorney. Stevens Moore and Ondrejko contacted Stephen Boyd, an IRS special agent for the criminal division. Boyd obtained a search warrant from Magistrate Judge Ivan Lemelle which authorized Boyd to search and seize accounts receivable from Moore's medical practice, and/or patient billing information. There is a

dispute as to what happened next.

Defendants contend that, once they decided to obtain a search warrant, they returned the records to their original location. Then Ordrejko and Stevens Moore took the search warrant to plaintiff's home, and Special Agents Philip Guilott and Louis Oubre inventoried and seized the records.

Plaintiff maintains that a search warrant was obtained as a pretext to cover up the fact that the records had already been obtained, albeit through illegal means. Plaintiff argues that the records were *not* returned to their original location before the search warrant was executed.

Plaintiff alleges in the complaint that defendants illegally and unlawfully entered his home. Plaintiff also alleges that the defendants conducted a lengthy, exhaustive and destructive search of his things, including his private books and papers. Finally, plaintiff alleges that defendants seized and carried away his books and papers in contravention of the constitution and the laws of the United States and Louisiana. If the Court determines that the defendants' entry into Moore's home was lawful, plaintiff argues, alternatively, that the agents exceeded the scope of their authority; plaintiff contends that defendants' search and subsequent seizure of his files and records were not authorized by the order for entry signed by magistrate Judge Chasez. Therefore, plaintiff maintains, the information gained from the file and records to obtain the search warrant could not be used to establish probable cause.

Defendants filed a motion to dismiss plaintiff's claims, or, in the alternative, for summary judgment. On June 2, 1992, the Court denied defendants motion to dismiss and granted defendants' motion for summary judgment on the issue of whether defendants legally entered plaintiff's premises. Doc. No. 16. In the same order, the Court denied without prejudice defendants' motion for summary judgment as to the issues of qualified immunity and prescription. *Id.*

This case is before the Court now on defendants' second motion for summary judgment on the ground that this action is barred by defendants' qualified immunity. Plaintiff again contends that the defendants are not entitled to qualified immunity in this case.

Defendants assert that they are shielded from suit by qualified immunity. In asserting qualified immunity as a defense, a defendant official must plead that he acted in good faith and establish that he was acting in his official capacity and within the scope of his discretionary authority. Salas v. Carpenter, 980 F.2d 299, 306 (5th Cir. 1992). "An official acts within his discretionary authority when he performs non-ministerial acts within the boundaries of his official capacity." Cronen v. Texas Dept. of Human Services, 977 F.2d 934, 939 (5th Cir. 1992).

The first issue this Court must address is whether defendants pled and established that they acted in good faith and within their discretionary authority. Defendants contend that they entered plaintiff's house on March 29, 1990, pursuant to the order for entry on premises to effect tax levy, which was issued by Magistrate Judge Alma

Chasez on March 22, 1990. Defendants maintain that they seized the records at issue because they believed that the records fell within the plain view exception to the warrant requirement. Defendants contend that they returned the records to plaintiff's home, and later seized the records pursuant to a search warrant signed by magistrate Judge Lemelle.

This Court finds that defendants pled that they acted in good faith and within their discretionary authority. Defendants entered the house pursuant to an order for entry. Defendants claim that their initial seizure of the files was lawful because they had probable cause to believe the files were evidence of a crime and because the plain view exception to the warrant requirement applied. Without addressing the merits of defendants' claims, this Court finds that defendants satisfied their burden of proff on this initial issue.

Qualified immunity shields conduct not violative of clearly established constitutional or statutory rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Austin v. Borel, 830 F.2d 1356, 1358 (5th Cir. 1987). In order for a plaintiff to overcome a defendant's claim of qualified immunity, he must claim that the defendant violated a right which is sufficiently clear that a reasonable official would know whether he is violating that right. Anderson v. Creighton, 483 U.S. 635, 640 (1987). Thus, once defendants satisfy their burden of asserting the affirmative defense of qualified immunity, the plaintiff has the burden of proving that his allegations, if accepted as true, state a claim for violation of a clearly established constitutional right.

Siegert v. Gilley, ___ U.S. ___, 111 S.Ct. 1789, 1792 (1991); *Salas,* 980 F.2d at 304.

Thus, the second issue the Court must determine is whether the plaintiff alleged a violation of a clearly established constitutional right. "When a defendant raises a qualified immunity defense, 'whether the conduct of which the plaintiff complains violated clearly established law' is an essentially legal question.' " Pfannstiel v. City of Marion, 918 F.2d 1178 (5th Cir. 1990), *quoting* Michell v. Forsyth, 472 U.S. 511, 526 (1985). the issue of whether the defendant in fact committed the alleged acts is a factual question; the burden is on the plaintiff to raise a genuine issue in order to avoid summary judgment in defendant's favor. *Mitchell,* 472 U.S. at 526.

Plaintiff in this case contends that the defendants violated his fourth amendment rights. Plaintiff alleges two alternative causes of action: (1) that defendants illegally entered his home, and/or (2) that defendants exceeded the scope of their authority. The Court granted defendants' motion for summary judgment as to the illegal entry allegation. Doc. No. 16. However, the Court denied defendants' motion to dismiss the scope of authority cause of action. *Id.* Therefore, whether the latter claim states a violation of the fourth amendment is the issue currently before this Court.

The plaintiff alleged that the defendants searched and seized records and files that were not specified in, and were beyond the scope of the writ of entry. In effect, as to the seizure of the unspecified records, plaintiff alleges a warrantless search without probable cause and exigent cir-

cumstances. This Court finds that plaintiff's claim alleges a violation of a clearly established constitutional right, the fourth amendment.

In addition, this Court finds that the plaintiff pled sufficient facts supporting his claim that defendants in fact committed the fourth amendment violation. Plaintiff alleged that the writ of entry did not list the records or the places they were found. Plaintiff also alleged that defendants could not determine the contents of the files without opening them. Finally, plaintiff alleged that the files were seized and were not returned to their original location before the defendants obtained a search warrant. Plaintiff has met his burden of alleging a violation of a clearly established constitutional right.

If the Court decides that plaintiff's allegations do not state a constitutional claim, then that is the end of the inquiry; the defendant is entitled to qualified immunity in the case. However, where, as here, the Court finds that plaintiff's allegations *do* state a constitutional claim, then the third step is to examine the objective reasonableness of the defendant official's conduct. *Salas,* 980 F.2d at 306.

The Fifth Circuit follows this rule: "If reasonable public officials could differ on the lawfulness of the defendant's actions, the defendant is entitled to immunity." *Id.* Or, stated another way, the defendants are entitled to immunity if "their actions could reasonably have been thought consistent with the right they are alleged to have violated." Duckett v. City of Cedar Park, Texas, 950 F.2d 272, 279 (5th Cir. 1992), *quoting Anderson,* 483 U.S. at 638. The plaintiff has the burden of showing that there is a fact-

ual dispute as to whether the defendants' conduct was reasonable in light of clearly established law. *Pfannstiel*, 918 F.2d at 1183.

Defendants argue that their seizure of certain records from an office in plaintiff's home did not violate plaintiff's fourth amendment rights because the seizure was proper under the "plain view" doctrine. Horton v. California, 496 U.S. 128, 142 (1990); Coolidge v. New Hampshire, 403 U.S. 443, 465-471 (1971). In order to establish that a seizure was legal under the plain view doctrine, defendants must prove: (1) the seizing officers were located in a place where they had a right to be; (2) it was immediately apparent to the officers that the items seized were evidence of a crime, contraband, or otherwise subject to seizure and (3) the officers had a lawful right of access to the object itself. *Horton*, 496 U.S. at 136-137.

As to the first requirement, in granting defendants' motion for summary judgment, this Court already found that the officers lawfully entered Dr. Moore's home. Doc. No. 16. That ruling applies, of course, in deciding the pending motion.

The next issue the Court must confront is whether it was immediately apparent to the officers that the items seized were evidence of a crime contraband, or otherwise subject to seizure. Defendants contend that defendants, Revenue Officer Steve Fanguy and Revenue Agent Cyrus J. Fanguy, found records which Dr. Moore, while under oath, denied having. Defendants claim that the two men recognized that the records were evidence that plaintiff had committed the crime of perjury.

Plaintiff, on the other hand, argues that the records are not evidence of criminal wrongdoing at all, and that, consequently, the records did not create an immediate appearance of criminal wrongdoing. Plaintiff argues, first, that the records were not evidence of perjury because plaintiff had never denied their existence, contrary to defendants' contention, but had instead asserted that the information in the records was protected by the doctor-patient privilege under Louisiana law. Plaintiff argues that he *refused* to produce the records, rather than merely *failing* to produce them.

Second, Plaintiff argues that it could not have been immediately apparent that the records were subject to seizure because it was necessary for defendants to open the manila folders containing the records in order to discover what they were; the records themselves were not in plain view. Under Arizona v. Hicks, 480 U.S. 321, 325 (1987), if the defendants opened the files to ascertain their contents, then the search does not fall into the plain view exception to the warrant requirement. In *Hicks*, police officers entered an apartment after a shooting occurred there. *Id.* at 323. While in the apartment searching for the gunman, victims, and weapons, one of the police officers moved some of the components of a stereo in order to read and record the serial numbers. *Id.* The Court held that moving the components constituted a separate search unjustified by the original exigent circumstances. *Id.* at 325. Therefore, the officer's conduct was in violation of the fourth amendment since he did not hve a warrant or probable cause to search the stereo. *Id.* at 325-26.

In *Anderson*, 483 U.S. at 641, the Court said that

good faith immunity is not lost when an officer violates the Fourth Amendment unless a reasonable officer would know that the specific conduct was impermissible. The *Anderson* Court accepted the general premise that officers are not to conduct warrantless searches unless there is probable cause and exigent circumstances. *Id.* However, whether probable cause and exigent circumstances existed was a disputed factual question which could not be resolved on summary judgment. *Id.* Similarly, in the case at hand, there is a factual dispute regarding the applicability of the plain view exception to the warrant requirement, making summary judgment inappropriate.

The issue of whether it was immediately apparent that the records were evidence of perjury cannot be determined on summary judgment in this case; there is a genuine dispute as to the material facts. The parties disagree as to whether plaintiff had previously denied the existance of the records and as to whether the defendants knew what information the files contained before opening them.

The third prong of the plain view doctrine is whether the defendant had a lawful right of access to the records. The defendant claim that once they were in Moore's house pursuant to a writ of entry they had a right to seize any property necessary to effect the tax levy.

Plaintiff asserts that the defendants did not have a lawful right of access to the records. Plaintiff relies on the fact that the writ of entry did not specify: (1) "records"; (2) the offices of either Dr. Moore or Dorothy Lynn Moore, in one of which the records were located; or (3) the office

furnishings where the records were located. This Court finds that plaintiff has alleged sufficient material facts to create a genuine dispute as to whether the defendants had a lawful right of access to the records.

Although the issue of whether a defendant is entitled to qualified immunity is a question of law, that issue requires the preliminary determination of underlying questions of fact such as whether the officers' conduct was objectively unreasonable, that is, whether it violated clearly established constitutional rights of which a reasonable person would have known. The Court finds material factual disputes regarding: (1) whether it was immediately apparent that the records were evidence of a crime; and (2) whether the defendants had a right of access to the records. Because of those factual disputes, this Court cannot decide on summary judgment whether defendant's conduct was objectively unreasonable. Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, Steve Fanguy, John Reedy, Michelle Babin, Dina Bonvillain, Angela Camille, Tina Samanie, Cyrus Fanguy, Bill Algu, MacDuffie Harrod, Denise Adams, Joe Burchis, Eugene Nepveaux, Henry McKinell, Jeff Daniels, James M. Valentine, Philip Guilott, Louis Oubre, Stevens Moore and Jill Ondrejko, for summary judgment on the ground that this action is barred by qualified immunity, be, and the same hereby DENIED for the above stated reasons.

/s/ Frederic J. Heebe

UNITED STATES DISTRICT COURT

APPENDIX H

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF DENISE ADAMS

DENISE ADAMS declares:

1. My name is Denise Adams. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. As of March 29, 1990, I had been a Revenue Agent for two and a half years.

2. As a Revenue Agent my primary duty is to examine federal income tax returns. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service.

GOVERNMENT
EXHIBIT
C

3. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property from the residence located at 207 Oak Alley Drive, Houma, Louisiana, in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

4. I arrived at Dr. Moore's residence at approximately 10:00 A.M. I left for lunch at approximately 12:30 P.M. and returned at approximately 1:30 P.M. I left the residence at approximately 9:00 P.M.

5. While at the residence, I assisted the Revenue Officers inventory the property being seized. I inventoried items in the den/living room, master bedroom and wine room, such as furniture, liquor, paintings, etc., on ruled paper. I also assisted in transferring inventoried items from the ruled paper to Forms 2433.

6. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of January, 1993.

/s/ Denise Adams

DENISE ADAMS

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF WILLIAM O. ALGU

WILLIAM O. ALGU declares:

1. My name is William O. Algu. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. I have been a Revenue Agent for the past six years.

2. As a Revenue Agent my primary duty is to examine federal income tax returns. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service.

3. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property from the residence located at 207 Oak Alley Drive, Houma, Louisiana, in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

4. I arrived at Dr. Moore's residence at approximately 11:00 A.M. I departed the residence at approximately 10:00 P.M.

5. While at the residence, I assisted the Revenue Officers inventory the property being seized. I inventoried items in the living and dining rooms. I also assisted in transporting guns, furs and several cases of wine seized from Dr. Moore's residence to the office of the Internal Revenue Service in Houma.

6. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of January, 1993.

/s/ William O. Algu

WILLIAM O. ALGU

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF DINA BONVILLAIN

DINA BONVILLAIN declares:

1. My name is Dina Bonvillain. I am a Revenue Officer Aide with the Collection Division of the Internal Revenue Service ("IRS"). My post of duty is in Houma, Louisiana. I have been a Revenue Officer Aide since December, 1988.

2. My duties as a Revenue Officer Aide include assisting the Revenue Officers in my group in the performance of their duties.

3. On March 29, 1990, I was assigned to assist Revenue Officer Brenda Felger in her attempts to collect tax liabilities of Dr. Thomas A. Moore.

4. In the morning of March 29, I went to the Terrebonne Parish Courthouse to file several notices of federal

tax liens. After I filed the liens, I went to the IRS office in Houma. I then went with Revenue Officer Jeff Daniel to Bayou Oaks Hospital for the purpose of locating and seizing a Mercedes Benz belonging to Dr. Moore.

5. I arrived at Dr. Moore's residence at approximately 11:00 a.m. I assisted in inventorying items in the living room area. I was also assigned to run various errands during the day.

6. Under the direct instructions of my Group Manager, Henry McKinell, I went to the IRS office in Houma to copy the contents of a file folder that held invoices, appraisals and other information relating to assets owned by Dr. Moore. I returned the file folder to Mr. McKinell at the residence of Dr. Moore.

7. Later on in the evening, I assisted Special Agents Louis Oubre and D. Philip Guilott in indexing documents found at the residence. The extent of my involvement was limited to listing documents on sheets of paper and assigning them a letter for the purpose of indexing. I did not review the documents but merely wrote down information dictated by the Special Agents. I wrote the information by hand on paper and later began to type it. I did not finish the typing. It was finished by Revenue Agent Angela Camille.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of January, 1993.

/s/ Dina Bonvillain

DINA BONVILLAIN

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF JOE BRUCHIS

JOE BRUCHIS declares:

1. My name is Joe Bruchis. I am a Group Manger with the Examination Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. I have been a Group Manager for approximately five years.

2. As a Group Manager my primary duties are to supervise the work of the Revenue Agents in my group and to evaluate their performance. As part of my duties, I am also required to perform other duties as assigned by the internal Revenue Service.

3. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property from the residence located at 207 Oak Alley Drive, Houma, Louisiana, in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

4. I arrived at Dr. Moore's residence at 10:00 A.M. and left at approximately 10:00 P.M.

5. While at the residence, I identified potential assets for seizure in the master bedroom, wine closet and kitchen. I watched the movers load items into the moving van to ensure that no valuables were stolen. I also loaded boxes of wine and guns into my pick-up truck and transported them to the office of the Internal Revenue Service in Houma.

6. Sometime in the afternoon, I was present in Dr. Moore's home office with Revenue Officer Steve Fanguy and Revenue Agent Cy Fanguy. Our purpose for being in the office was to move desks to be loaded on the moving van. I recall that Steve Fanguy and Cy Fanguy found in the office some computer diskettes and files that appeared to be accounting records.

7. These records were boxed-up and carried outside to be loaded on the moving van. They were later returned to the house after a decision was made by I.R.S. District Counsel to obtain a search warrant. I was not involved in boxing-up and moving the records.

I declare under penaltay of perjury that the foregoing is true and correct.

Executed on this 20th day of January, 1993.

/s/ Joe Bruchis

JOE BRUCHIS

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF ANGELA L. CAMILLE

ANGELA L. CAMILLE declares:

1. My name is Angela L. Camille. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty has been in Jackson, Mississippi, since April 22, 1991. From June 28, 1982, until April 22, 1991, my post of duty was in Houma, Louisiana.

2. As a Revenue Agent my primary duty is to examine federal income tax returns. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property in an attempt to collect the unpaid federaal income tax liabilities of Dr. Thomas A. Moore.

3. On the morning of March 29, 1990, I went with

Revenue Officer John Reedy to Premier Bank in Houma to act as a witness while he served a levy on the bank. When that was completed, we returned to the Houma I.R.S. office. We then received instructions to go to Dr. Moore's residence at 207 Oak Alley Drive to assist in taking an inventory of household contents.

4. I believe that I arrived at Dr. Moore's residence at approximately 10:30 A.M. I left the residence around 11:00 P.M. I did leave the residence and come back a few times during the day for the purposes of taking a break, having lunch, and changing clothes.

5. While at the residence, I primarily worked with Revenue Officer Eugene Nepveaux taking inventory of the contents of one of the bedrooms. I recall taking inventory on a number of hand guns, rifles and shotguns in addition to some coins. Later on, I assisted several I.R.S. employees in taking an inventory of china and crystal in the dining room and in the den. I did not seize any of the items. I merely acted as an assistant who primarily documented items eventually removed from the premises by others. What I did was list items on a legal pad and eventually recopy these items to whatever form it is that the Collection Division uses to list items seized.

6. I recall typing a list of names right before my departure from Dr. Moore's residence. I do not recall any specifics, but in preparing this Declaration I contacted Revenue Officer Aide Dina Bonvillain (who is my sister) who had prepared the handwritten list of names. Mrs. Bonvillain informed me that she had written the names down as they were called out to her by other I.R.S.

employees who were boxing up files. The names on the files were being written down so that an inventory of the boxes could be kept. I typed the list so that it would be easier to read. I did not actually see the files.

7. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of January, 1993.

/s/ Angela L. Camille

ANGELA L. CAMILLE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF JEFFREY T. DANIEL

JEFFREY T. DANIEL declares:

1. My name is Jeffrey T. Daniel. I am a Revenue Officer with the Collection Division of the Internal Revenue Service. My post of duty is in Baton Rouge, Louisiana. I have been a Revenue Officer since June 10, 1984.

2. My duties as a Revenue Officer include the collection of delinquent tax accounts. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service. On March 29, 1990 I was assigned to assist in the seizure of property from the residence located at 207 Oak Alley Drive, Houma, Louisiana, in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

3. I arrived at Dr. Moore's residence at approximately 11:00 A.M. and left at approximately 11:30 P.M.

4. While at the residence, I assisted Revenue Officer Felger in the seizure of jewelry, silver bars, bottles of wine, and many other household furniture.

5. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this ____ day of January, 1993.

/s/ Jeffrey T. Daniel

JEFFREY T. DANIEL

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF CYRUS J. FANGUY

CYRUS J. FANGUY declares:

1. My name is Cyrus J. Fanguy. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. I have been a Revenue Agent for approximately 21 years.

2. As a Revenue Agent my primary duty is to examine federal income tax returns. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore. As a Revenue Agent, I had earlier been involved in an examination of Dr. Moore's tax liabilities.

3. My first recollections of the Dr. Moore case date back to early 1980. At that time, I recall hearing one of my fellow revenue agents talking about a local psychiatrist who had filed tax protester type returns and was impossible to deal with. The Dr. Moore case had been referred to my group in Houma for examination. According to the referral, Dr. Moore had been identified by the Service Center as a tax protester who had discontinued filing proper federal income tax returns after filing his 1976 return. It was later learned that Dr. Moore may have been part of an organized tax protester movement.

4. The case was originally assigned to Revenue Agent Gerald Fortier for a determination of Dr. Moore's tax liabilities for the years 1977, 1978, and 1979. I recall that Gerald was unable to get any cooperation whatsover from Dr. Moore. Gerald issued numerous summonses and made numerous third party contacts in order to conduct his examination. His efforts were fruitless due to Dr. Moore's intentional efforts to leave no "paper trail." As a last resort, Gerald completed his examination by establishing tax liabilities in accordance with a "Bureau of Labor Statistics" determination based on Dr. Moore's apparent standard of living.

5. A year or so later, the years 1980 and 1981 were assigned to another Revenue Agent in my group by the name of Billy Chapman. Billy went through the same audit procedures with identical results. In fact, it was even more difficult because Dr. Moore had been through Gerald's examination and had learned quite a bit about the I.R.S. and how it operated. Dr. Moore was again totally uncooperative and put as many obstacles as possible to in-

terfere with his examination.

6. The case was assigned to me on September 24, 1984, for the reexamination of the years 1980-1981. In addition, the subsequent years of 1982, 1983, and 1984 were picked up for examination since Dr. Moore had continued his non-filing pattern. My examination lasted until February 21, 1986, for a total of approximately eighteen months. During that period, I met with Dr. Moore on seven different occasions for the express purpose of examining Dr. Moore's records. Dr. Moore presented nothing in the line of books and records during the entire examination. I issued over 1,200 summonses to individuals, corporations, and banks in an effort to locate information which could be used to determine Dr. Moore's correct income and tax liabilities for the years 1980 through 1984. Nothing of any consequence was obtained from the summonses.

7. During the course of my examination, the Collection Division took enforcement action to collect Dr. Moore's earlier tax liabilities. After that enforcement action, Dr. Moore prepared an affidavit estimating both his income and expenses for the five year period. I transferred these figures to a Revenue Agent's Report which Dr. Moore eventually signed, and the tax liabilities were later assessed.

8. I can say without hesitation that the Dr. Moore case has been the most frustrating and outright difficult examination that I have ever been involved with in my career with the I.R.S. I have never had a case where the taxpayer worked so hard to make my job even harder.

9. On March 29, 1990, upon arrival at Dr. Moore's residence, I was instructed to assist the Revenue Officers to take inventory of assets being seized in any room of the house because every room needed to be inventoried. The first room that I assisted to inventory was the kitchen. I then moved on to the next room, which happened to be an office, to continue to inventory assets.

10. In the office, I noticed a computer on the desk and numerous computer disks lying on top of the desk. I also noticed numerous files in the drawers of a wall shelf. Revenue Officer Steve Fanguy had also found other files in the drawers of a desk. Group Manager Henry McKinell was called to the room. Upon Henry's arrival, I told him that the computer, computer disks, and files appeared to be Dr. Moore's record keeping system. I further commented that I had been told previously by Revenue Officer Brenda Felger that Dr. Moore had testified in court under oath that he had no records to submit to the IRS or the Court at the time of a hearing on the enforcement of an Internal Revenue Service summons.

11. Management made a decision to seize the computer, computer disks, and files. I then moved to another room to be inventoried, which was the study. I worked in that room for some time with other I.R.S. employees.

12. While working in the study, I was asked to go out to one the vehicles parked on the street outside Dr. Moore's residence. I believe the vehicle was one that had been driven from New Orleans by the Special Agents of the Criminal Investigation Division. Upon arriving at the vehicle, which had a carphone, I was informed that a search

warrant was being prepared by our attorneys and that certain information from me regarding the records to be seized was needed. I conveyed the information about the records found in the office to Special Agent Fred Boyd, who was in New Orleans.

13. I learned later that day that a search warrant had been secured and that the Special Agents of the Criminal Investigation Division were in the process of seizing and inventoring the files.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22 day of January, 1993.

/s/ Cyrus J. Fanguy

CYRUS J. FANGUY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF McDUFFY K. HERROD

McDUFFIE K. HERROD declares:

1. My name is McDuffie K. Herrod. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty is in Baton Rouge, Louisiana. My post of duty was formerly in Houma, Louisiana.

2. I was not involved in the seizure of any property owned by Dr. Thomas A. Moore (or anyone else) on March 29, 1990. On that date, I was on annual leave from my post of duty. I have never been to Dr. Moore's residence. I have never met Dr. Moore.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of January, 1993.

/s/ McDuffie K. Herrod

McDUFFIE K. HERROD

(3) 94 213 JUL 27 1994

NO. OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1994

THOMAS A. MOORE, M.D.
Plaintiff-Petitioner

versus

BRENDA KELGER, ET AL
Defendant-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX VOLUME II

Thomas A. Moore, M.D.
Pro Se
502 Barrow St.
Houma, LA 70360
Telephone (504) 876-2222

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

112 pp

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF HENRY FRANCES McKINELL

HENRY FRANCES McKINELL declares:

1. My name is Henry Frances McKinell. I am a Revenue Officer Group Manager with the Collection Division of the Internal Revenue Service ("IRS"). My post of duty is in Baton Rouge, Louisiana. I have been a Group Manager since July 10, 1974. As a Group Manager I supervise and evaluate the Revenue Officers in my group as they perform their respective duties.

2. The delinquent tax account of Dr. Thomas A. Moore was assigned to my group for collection. Dr. Moore owed in excess of $1.25 million in federal income taxes covering several years. The IRS expended much time and effort in attempting to collect these taxes over a long period of time. I viewed Dr. Moore as an illegal tax protestor who had employed many subterfuges and manipulation of assets to defeat the collection of the taxes.

For example, Dr. Moore had transferred all his assets to his wife, or caused assets to be placed in her name, in an attempt to preclude their seizure by the IRS.

3. At one time, Dr. Moore's account was handled by Revenue Officer Gene Nepveaux. Revenue Officer Nepveaux requested approval from the District Counsel of the IRS to file nominee liens on Dr. Moore's wife and a sham corporation.

4. As a result of a realignment, Dr. Moore's account was transferred to Revenue Officer Brenda Felger. Once the approval of District Counsel was received on the nominee liens, Revenue Officer Felger began coordinating the filing of the nominee liens and seizure action to effect collection. To do this, she obtained the cooperation of the Examination Division to make Revenue Agents available as accompanying IRS employees. She worked with the Criminal Investigation Division ("CID") to have them provide Special Agents as armed escorts. She secured a writ of entry from the U.S. District Court to enter Dr. Moore's residence to seize assets subject to levy.

5. On March 29, 1990, a team of Revenue Officers, Revenue Agents and Special Agents went to Dr. Moore's residence to execute the writ of entry and seize assets subject to levy located at the residence. After dealing with the initial opposition by the taxpayer and his attorney, the IRS employees began the inventory and seizure of the contents of the residence.

6. I arrived at Dr. Moore's residence around 9:30 A.M. I left around 12:30 or 1:00 A.M. on March 30. As a

Group Manager, I did not personally seize any items, but oversaw the actions taken by other IRS employees.

7. At some point during the day, I was shown a file folder that held invoices, jewelry appraisals, and other documents relating to the assets that were being seized or could be seized at the residence. I viewed this file folder as pertinent to the search for property subject to levy as authorized by the writ of entry. I requested Revenue Officer Aide Dina Bonvillain to make a copy of the contents of the file folder. The Revenue Officer Aide went to the IRS office to copy the documents. The file folder was then returned to Dr. Moore's residence and left there.

8. When I first arrived at the residence, Mrs. Moore was in the bathroom. Revenue Officer Rebecca Patton was stationed outside the door. Mrs. Moore spent a long time in the bathroom. The IRS employees later discovered a floor safe in the bathroom. Based on the information that I had seen in the file folder, it is my belief that Mrs. Moore may have removed valuable pieces of jewelry from the safe, and removed them from the residence beyond our seizure, since the pieces could not later be found in the house.

9. In the afternoon, I was advised that several file drawers and computer disks had been found in one of the rooms that Dr. Moore had set up as an office. These files and computer disks appeared to be the records that Dr. Moore had denied he kept in testimony he had given under oath when the IRS had sought the enforcement of a summons in District Court. The IRS had earlier summoned these records to gather information necessary for the collection of Dr. Moore's tax liabilities.

10. I viewed these files and computer disks as being evidence that Dr. Moore had committed perjury before the District Court. Therefore, I gave instruction to the employees to seize the records as evidence that could be used to bring perjury charges against Dr. Moore.

11. After discussing this matter with James Valentine, the Branch Chief for the Collection Division, who was also present at the house, it was decided that we should get legal advice from District Counsel attorney Stevens Moore and Assistant United States Attorney Jill Ondrejko, who were at the IRS office in Houma. The attorneys recommended that a search warrant be obtained for the seizure of the records.

11. The records were placed back in their original location. When the search warrant was received, the records were inventoried and seized by CID agents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of January, 1993.

/s/ Henry Frances McKinell

HENRY FRANCES McKINELL

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF MICHELLE BABIN MOORE

MICHELLE BABIN MOORE declares:

1. My name is Michelle Babin Moore. From January 11, 1988, until January 14, 1992, I was a Revenue Officer with the Collections Division of the Internal Revenue Service. My post of duty was in Houma, Louisiana. I left the Internal Revenue Service when I married and relocated to Lewisville, Texas.

2. My duties as a Revenue Officer included the collection of delinquent tax accounts. As part of my duties, I was also required to perform other duties as assigned by the Internal Revenue Service.

3. On March 29, 1990, I was assigned to assist in the seizure of property in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

4. On the morning of March 29, 1990, I left the I.R.S. office in Houma with Revenue Officer Donna Berry at approximately 7:30 A.M. and proceeded to Chauvin, Louisiana, to seize and inventory a houseboat. After we completed the inventory of the houseboat and had the locks changed, I went to Dr. Moore's residence at 207 Oak Alley Drive in Houma.

5. I arrived at Dr. Moore's residence sometime between 12:00 and 1:00 P.M. I left the residence, I believe, twice during the seizure. The first time I left to get lunch, the second time was to go to the I.R.S. office for some more seizure tags and blue bags with seals to secure jewelry and other valuables. I finally left the residence between 3:30 and 4:30 P.M. and returned to the I.R.S office to leave town for the weekend.

6. While at the residence, I assisted with the inventory in the dining area. Although I cannot remember all items inventoried, I do remember assisting with the china, crystal, silver, and various items in the location. I also assisted with counting cash secured by other agents in various rooms of the house. This cash was brought to me in the dining area.

7. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this ____ day of January, 1993.

/s/ Michelle Babin Moore

MICHELLE BABIN MOORE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF STEVENS E. MOORE

STEVENS E. MOORE declares:

1. My name is Stevens E. Moore. I am a docket attorney in the New Orleans District Counsel office for the Internal Revenue Service. I have been in this position since October, 1984.

2. My primary duties as a docket attorney include representing the Commissioner of the Internal Revenue Service in the U.S. Tax Court, reviewing proposed notices of deficiencies, and rendering advice to the Examination Division of the Internal Revenue Service during large case audits; reviewing recommendations for criminal prosecution of taxpayers suspected of violating criminal tax statutes; assisting the Collection Division of the Internal Revenue Service collect taxes by rendering advice in legal matters, including the adequacy of writs of entry, the filing of nominee liens, and the referral to the United States At-

torney of actions in bankruptcy cases.

3. The case of Dr. Thomas Moore first was assigned to me on July 14, 1987. During the course of my involvement in the case of Dr. Moore, I recommended that his wife be deemed the nominee of Dr. Moore with respect to certain assets. This recommendation was adopted by my office, and was forwarded to the Collection Division on February 12, 1990.

4. In March, 1990, Revenue Officer Brenda Felger requested my office's assistance in drafting writs of entry for the search, seizure and inventory of assets of Dr. Moore whether in his name or in the name of his nominees, Mrs. Moore and Q-B Tek, Inc. I assisted Revenue Officer Felger in drafting the application for a writ of entry for the home of Dr. Moore. I also accompanied Revenue Officer Felger to the United States Attorney's office for approval of the application. Additionally, I accompanied Revenue Officer Felger to the chambers of Magistrate Alma Chasez to obtain the order for the writ.

5. Prior to the execution of the writ of entry, I rendered advice to Revenue Officer Felger pertaining to legal considerations involving the execution of the writ. I attended a planning meeting on March 28, 1990, in Houma, Louisiana, to participate in discussions on the execution of the writ of entry and the seizure of property on March 29, 1990.

6. On March 29, 1990, I traveled to Houma and remained at the office of the Internal Revenue Service in Houma to be available to answer any questions that would

arise during the course of the execution of the writ of entry and the seizure of property.

7. I received a telephone call at approximately 3:30 p.m. from, to the best of my recollection, Henry McKinell, Collection Group Manager for the Houma post of duty. Mr. McKinell told me that while the Internal Revenue Service employees were removing items from a desk, which the Service had seized, they found records which appeared to be patient billing records. He asked my opinion about seizing the records. I told Mr. McKinell that I would discuss his question with the appropriate persons and get back to him. Jill Ondrejko, an Assistant United States Attorney for the Eastern District of Louisiana, was with me in Houma. We conferred and concluded that the records were those that Dr. Moore testified in court he did not maintain, and therefore could be evidence of the crime of perjury. We therefore decided that I would obtain advice from my District Counsel in New Orleans.

8. I called my office and spoke to Assistant District Counsel Louis John Zeller, Jr., and Steve Waller, Deputy Regional Counsel (Criminal Tax). Both concluded that the best approach was to obtain a search warrant to seize the records.

9. Based upon their advice, AUSA Ondrejko called an Assistant United States Attorney in her office and explained to him the need for the search warrant. I did not see the application, affidavit or search warrant before their submission for approval by a Magistrate. Only the signed search warrant was faxed to me, by Special Agent Fred Boyd of the New Orleans District Criminal Investigation

Division of the Internal Revenue Service, at the Houma post of duty.

10. After receiving the search warrant, AUSA Ondrejko and I carried the search warrant to the home of Dr. Moore, and handed it to Phil Guilott, Special Agent with CID. AUSA Ondrejko and I entered Dr. Moore's home and viewed the records and concluded that they were patient billing records. The records were then seized by Special Agents Guilott and Louis Oubre.

11. AUSA Ondrejko and I also viewed the inventory and seizure of the assets in the home. Neither AUSA Ondrejko nor I searched, inventoried or seized any assets in the home. We remained at the house until approximately 9:30 p.m., after which we departed, and returned to New Orleans.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of January, 1993.

/s/ Stevens E. Moore

STEVENS E. MOORE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF EUGENE E. NEPVEAUX

EUGENE E. NEPVEAUX declares:

1. My name is Eugene E. Nepveaux. I am a Revenue Officer with the Collection Division of the Internal Revenue Service. My post of duty is in Lafayette, Louisiana. I have been a Revenue Officer for over 23 years.

2. My duties as a Revenue Officer include the collection of delinquent tax accounts. I was assigned to the collection case of Dr. Thomas A. Moore from April 1987 through February 1990. I worked the case from an initial demand for payment in April 1987 to the point of recommending the filing of nominee liens against his wife, Dorothy Lynn Moore. The nominee liens recommendation was approved by District Counsel of the Internal Revenue Service in February 1990.

3. In February 1990, as a result of a realignment of

the collection groups, I was instructed to transfer the collection file on Dr. Moore to Revenue Officer Brenda Felger in Houma, Louisiana.

4. I was requested to accompany Revenue Officer Felger in the seizure of assets to take place on March 29, 1990. On that date, at approximately 9:00 a.m., Revenue Officer Felger and I proceeded to the residence of Dr. Moore. We were accompanied by Special Agents Phil Guilott and Louis Oubre. Once at Dr. Moore's house, I witnessed Revenue Officer Felger made demand upon Dr. Moore for the payment of his tax liabilities, as she delivered the Levy (Form 668-B) to him. I also witnessed Revenue Officer Felger advising Dr. and Mrs. Moore that the purpose of our visit to the residence was to effect the seizure of the house and of all movable property located on the premises.

5. I gave assistance to Revenue Officer Felger throughout the day by taking inventory of items located throughout the entire premises. I wrapped, packaged and boxed many items. I was on the premises from 9:00 a.m. until 1:00 a.m. on March 30.

6. I believe that Dr. Moore has tried during the years to place assets beyond the reach of the Internal Revenue Service. He accrued a tax liability in excess of $1.2 million, yet claimed he owned no property. Mrs. Moore on the other hand, while working as a secretary for Dr. Moore, claimed to own a Rolls Royce and valuable real estate, among many other items of property.

7. While at Dr. Moore's residence, which Mrs. Moore

claimed belonged to her, I seized assets while having good reasons to believe that they indeed belonged to Dr. Moore. He didn't like it. I had several sporadic conversations with Dr. Moore throughout the day. In one instance he insisted on reading to me from a book by a Russian author (I believe the author was Solzhenitsyn). In another instance he referred to me as a "venereal wart on the anus of an AIDS-infected whore."

8. During the day, while removing items from drawers in order to move furniture out to the moving truck, I came across many documents. I viewed these documents in passing to determine whether they were subject to levy. As a Revenue Officer, I know and knew then, that certain documents, such as stock certificates, promissory notes and bearer papers, are subject to levy by the Internal Revenue Service, and I had to be sure that I did not fail to seize all assets subject to levy that could be located at the house.

9. Sometime in the afternoon, I was notified that certain files had been found in an office at the residence. I had been the Revenue Officer who had served an Internal Revenue Service summons upon Dr. Moore to produce information that would help me to determine his financial condition and locate assets subject to levy. Dr. Moore had earlier testified in court that he did not have the records I had summoned.

10. When I was notified that the files had been found, I went to the office and perused the files. The files were indeed the records that Dr. Moore had testified he did not have. Later on, the decision was made to get a search war-

rant to seize the files..

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of January, 1993.

/s/ Eugene E. Nepveaux

EUGENE E. NEPVEAUX

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF JILL L. ONDREJKO

JILL L. ONDREJKO declares:

1. My name is Jill L. Ondrejko. I have been employed as an Assistant United States Attorney (AUSA) in New Orleans, Louisiana, since February, 1989.

2. As an AUSA, it was part of my responsibility to handle the Internal Revenue Service summons enforcement docket. I was also required to handle other duties consistent with my position as an AUSA. I discontinued managing the summons enforcement docket in 1991.

3. As part of my duties while assigned the Internal Revenue Service summons enforcement docket, it was my obligation to prepare and file with the District Court petitions to enforce Internal Revenue Service summonses at the request of the Internal Revenue Service. In connection with this duty, I was referred several cases requesting en-

forcement of various summonses served upon Dr. Thomas A. Moore. Dr. Moore had refused to comply with the summonses and the Service had requested that he be compelled by the Court to provide the information requested in the summonses.

4. In June of 1989, I filed a petition to enforce an Internal Revenue Service summons served on Dr. Moore requesting an abundance of information, including, but not limited to, various patient information records. After many and lengthy hearings before U.S. Magistrate Judge Alma Chasez and U.S. District Judge Robert Collins, Dr. Moore was ordered to produce the records, and subsequently held in contempt when he declined to do so. Although Dr. Moore was ordered to produce the information requested by the summons, he refused to do so claiming that the records did not exist.

5. On March 29, 1990, I was at the office of the Internal Revenue Service in Houma, Louisiana, with Stephens Moore, an attorney with the office of District Counsel. We were available to assist the Internal Revenue Service in answering any legal question that might arise in the context of a seizure of property from Dr. Moore's home and other locations.

6. Stevens Moore and I were called by the Internal Revenue Service employees who were at the home of Dr. Moore. The employees had discovered records in the residence that resembled those records that Judge Collins had ordered Dr. Moore to produce, but which Dr. Moore claimed did not exist. We decided that a search warrant should be obtained before seizing the records because

criminal overtones of perjury and obstruction of justice were involved.

7. I contacted a fellow AUSA in New Orleans to request that he prepare an application for a search warrant in order to seize the records. I told the AUSA that records had been found by employees of the Internal Revenue Service at the residence of Dr. Moore that were evidence that Dr. Moore had committed perjury and had been engaged in the obstruction of justice. I did not see the search warrant application and supporting documents prior to their submission to a Magistrate in New Orleans. The search warrant was signed by U.S. Magistrate Judge Ivan Lemelle. It was then faxed to the Internal Revenue Service office in Houma.

8. Subsequently, Stevens Moore and I went to Dr. Moore's residence. I do not recall the precise time at which we arrived at the residence not the time we left, but do remember it was late in the afternoon when we arrived.

9. While at the residence, we reviewed the records which the Internal Revenue Service employees had found. The documents included patient invoices and accounts receivable, and were the records which the Court had earlier ordered that Dr. Moore produce. However, Dr. Moore had refused to produce the records contending that the did not exist, when in fact they did.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of January, 1993.

/s/ Jill L. Ondrejko

JILL L. ONDREJKO

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF LOUIS B. OUBRE III

LOUIS B. OUBRE III declares:

1. My name is Louis B. Oubre III. I am employed as a Special Agent with the Criminal Investigation Division of the Internal Revenue Service. My post of duty is in New Orleans, Louisiana. As of March 29, 1990, I had been a Special Agent for approximately 2 years and 7 months.

2. My duties as a Special Agent include the authority to investigate, to execute and serve search warrants and arrests warrants, to serve subpoenas and summonses, to make arrests without warrants, to make seizures of property subject to forfeiture, and to require and receive information as to all matters relating to the laws and regulations enforced and administered by the Internal Revenue Service. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service.

3. In the morning of March 29, 1990, Special Agent Philip Guilott, Revenue Officers Brenda Felger and Eugene Nepveaux, and I proceeded to the residence of Dr. Thomas A. Moore. Dr. Moore's spouse answered the door. She was informed of the purpose why we were there. She informed us that she needed to let out the dogs which were inside the house. She left and returned to the door a few minutes later. It was at that time that we entered the residence. Revenue Officer Felger explained to her that we were there for the purpose of executing the writ of entry and the seizure of property. Mrs. Moore exited the great room, where we were standing, and went into a room which we later learned was the bedroom. Several minutes later Dr. Moore exited the room and walked toward us. Revenue Officer Felger then began to explain to Dr. Moore our purpose for being at the residence.

4. As Special Agents, Philip Guilott and I were present at the seizure for the protection of Internal Revenue Service personnel as well as that of the taxpayer. We were there to assure that no one interfered with the agents in the performance of their duties.

5. After entering the house and securing the premises, both Special Agent Guilott and I began to randomly canvass the area to assure that the seizure was proceeding without any interference from outside forces.

6. Dr. Moore departed the residence on several occasions, one time returning with his attorney. On one occasion, due to the fact tht Dr. Moore's attorney was harassing Group Manager H.F. McKinell and Revenue Officer Felger, I was summoned to give them relief. I told the at-

torney that if he did not cease his harassment and allow the revenue officers and agents to perform their assigned tasks, I would be forced to take action which could possibly include removing him from the premises while the officers/agents performed their duties.

7. Later that afternoon, I was informed that while clearing out the contents of a desk for the purpose of seizing it, the officers/agents came across what appeared to be patient records. It was at this time that District Counsel and an Assistant United States Attorney were contacted. They requested that we apply for a search warrant.

8. After application and issuance of the search warrant, Special Agent Guilott and I seized the records described in the search warrant. We left a copy of the search warrant along with the inventory taped to the wall in the foyer.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of January 1993.

Louis B. Oubre III

LOUIS B. OUBRE III

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF JOHN J. REEDY, JR.

JOHN J. REEDY, JR., declares:

1. My name is John J. Reedy, Jr. I am a Tax Examiner with the Bankruptcy and Insolvency Unit of the Special Procedures Function of the Internal Revenue Service in New Orleans, Louisiana. On March 29, 1990, I was a Revenue Officer with the Collection Division of the Intenal Revenue Service. My post of duty was in Houma, Louisiana. At that time, I had been a Revenue Officer for approximately five years.

2. My duties as a Revenue Officer included the collection of delinquent tax accounts. As part of my duties, I was also requird to perform other duties as assigned by the Internal Revenue Service. On March 29, 1990, I was assigned to assist in the seizure of property in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

3. On the morning of March 29, 1990, I went to Premier Bank in Houma to serve a notice of levy and a summons and to seize any bank deposit boxes at the bank if any were found. After this was completed, I traveled to Dr. Moore's residence at 207 Oak Alley Drive to assist in a household goods seizure.

4. I arrived at Dr. Moore's residence at approximately 10:30 A.M. and left at approximately 6:30 P.M.

5. While at the residence, I helped to inventory one bedroom and a room containing a large wine supply.

6. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of January, 1993.

/s/ John J. Reedy, Jr.

JOHN J. REEDY, JR.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF TINA SAMANIE

TINA SAMANIE declares:

1. My name is Tina Samanie. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. I have been a Revenue Agent since November 3, 1986.

2. As a Revenue Agent my primary duty is to examine federal income tax returns. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service.

3. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property from the residence located at 207 Oak Alley Drive, Houma, Louisiana, in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

4. I arrived at Dr. Moore's residence at approximately 10:00 A.M. and left for lunch at approximately 12:30 P.M. I returned from lunch at approximately 1:30 P.M. I left the residence again at approximately 4:30 P.M. and returned at approximately 6:00 P.M. I left the residence at approximately 9:00 P.M.

5. While at the residence, I assisted the Revenue Officers inventory the property being seized. I inventoried items in the bedroom, bathroom, living room and wine room. I inventoried items such as jewelry from the bedroom and bathroom, pictures from the living room, and wine from the wine room. I listed these items on a plain sheet of paper.

6. The only conversation I had with Dr. Moore was to ask him not to take my photograph. He continued to try, and I told him that I would seize the camera if he did not stop.

7. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of January, 1993.

/s/ Tina Samanie

TINA SAMANIE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF JAMES M. VALENTINE

JAMES M. VALENTINE declares:

1. My name is James M. Valentine. I held the position of Chief of Branch I, Collection Division, New Orleans District, Internal Revenue Service from February 1983 to January 1987, and again from October 1988 to November 30, 1990. I retired from the Internal Revenue Service on November 30, 1990. I now live in Malawi, Africa.

2. While a Branch Chief, I managed seven (7) subordinate Group Managers in six groups over a designated area of the State of Louisiana. The groups consisted of Revenue Officers involved in the collection of delinquent federal taxes and the securing of delinquent tax returns.

3. On March 29, 1990, one of the groups under my supervision was involved in the seizure of assets subject to levy from the residence of Dr. Thomas A. Moore. The

Revenue Officer assigned to the case had previously obtained from the District Court a writ of entry to enter the residence.

4. I arrived at the residence around 11:30 a.m. and left sometime in the afternoon. A Branch Chief is not normally on site for the seizure of assets. However, Dr. Moore's case had some of the characteristics of tax protestor type activity, and I was concerned about the safety of our employees.

5. I did not personally search the residence or seize any items. In the afternoon of March 29, I was shown what looked like account receivable records. These records had been found while our employees were searching for assets to seize. Since Dr. Moore had denied having this type of records under oath, I told Group Manager Henry McKinell that this was a matter for discussion with counsel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 12th day of January, 1993.

/s/ James M. Valentine

JAMES M. VALENTINE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF STEVE FANGUY

STEVE FANGUY declares:

1. My name is Steve Fanguy. I am a Revenue Officer with the Collection Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. As of March 29, 1990, I had been a Revenue Officer for approximately three and a half years.

2. My duties as a Revenue Officer include the collection of delinquent tax accounts. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service. On March 29, 1990, I was assigned to assist in the seizure of property in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

3. Prior to that date, I had knowledge of Dr. Moore's lack of cooperation with the IRS. The Dr. Moore case had

been on-going since I was assigned to the Houma post of duty in October 1986. I believe that in 1989 I escorted Revenue Officer Gene Nepveaux when he served an IRS summons relating to the collection of Dr. Moore's taxes. Over the years, and especially in 1989 and 1990, in view of the failure of Dr. Moore to comply with IRS summonses and the recommendation that nominee liens be approved, it became more evident to me that enforcement action would be the imminent resolution of the case.

4. I arrived at Dr. Moore's residence at approximately 10:45 A.M. and left at approximately 11:45 P.M. Upon arrival at the residence, I began to inventory assets for the purpose of seizure. During the process, I called out the descriptions of the assets being seized to a co-worker listing them on legal sheets of paper. These sheets would later be transcribed to Forms 2433.

5. I was assigned to assist a variety of co-workers, calling out assets being seized throughout the day in various rooms. The rooms included the den, master bedroom, spare bedroom, hall, bathroom, closets, a wine closet, an office area, the attic, and garage.

6. Sometime in the afternoon, large assets needed to be loaded into the moving van. This was required because to load a moving van securely all large assets must be loaded first and then the remaining smaller assets and boxes. During this process, as directed by my Group Manaager, dresssers were emptied of all clothing and other assets that would not be seized. During the emptying of a cabinet in the den, a hand gun was found in a drawer filled with photo packages. I immediately called for the Criminal Investiga-

tion ("CID") Agents to remove the weapon and verify that the chamber was empty.

7. Upon entering the office in the back of the house, I found that two desks and computers needed to be disassembled because they were the only remaining large assets that needed to be moved to the moving van before other items could be loaded. I began surveying the drawers of the desks to detrmine the volume of their contents to locate enough floor space for all the miscellaneous items not worthy of seizure. The room was small and the movers needed enough space to maneuver the furniture.

8. As I surveyed the drawers of the desk near the hallway, I only found items that could be removed and placed on the floor easily and take little space. I continued to remove the contents of the other desk's drawers until I opened the left hanging file drawer and discovered numerous files. As I saw the files, in determining where I should place them to empty the desk prior removing it to the van, I realized these were not typical household files, but instead numerous files containing labels with individual names. I realized that these files could be the patient records which Dr. Moore had testified, under the penalties of perjury, he did not have when the Internal Revenue Service was enforcing a summons in the District Court. I did not look at the contents of the files but did notice they contained labels with individual names.

9. Revenue Agent Cyrus Fanguy identified in a bookcase more individually named files of the same nature of those found in the desk. Boxes of computer disks were also found that appeared to be labelled for account

receivable records which Dr. Moore had also testified he did not have.

10. My Group Manager was advised of the findings. I requested direction on the removal of the records from the desk to enable the desk to be removed from the room and loaded into the moving van.

11. I was directed to attempt to disassemble the desk drawer containing the files from the desk. After serveral attempts, this could not be done. After a meeting of management, I was directed to remove the records from the desk drawer and wall unit, I then placed them in a box for CID in the same order as found in the desk and wall unit.

12. The boxes were labelled and removed to the CID vehicle. Within a few minutes, prior to the desk being removed by the movers, the original decision to remove the records was modified. The boxes were removed from the vehicle and brought back into the desk drawer and wall unit exactly as they were prior to the removal. I had removed the records and felt confident that I could replace them to the original location where they were found.

13. I learned that a directive to secure a search warrant had been issued. When the search warrant was received, the CID agents began a detailed inventory of the files as they removed them from the desk drawer and wall unit and placed them into boxes to be transported to a secure facility.

14. Sometime in the evening, while searching for assets to seize, I found in the study or reading room a file

folder containing what appeared to be invoices and jewelry appraisals. Documents such as stock certificates and promissory notes are subject to levy by the Internal Revenue Service. I reviewed the contents of the file to determine whether any document was subject to levy and could be seized. I then handed this file folder to my Group Manager Henry McKinell.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 20th day of January, 1993.

/s/Steve J. Fanguy

STEVE FANGUY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

THOMAS A MOORE, M.D.	*	CIVIL NO. 92-0367
	*	
	*	SECTION: "B"
VERSUS	*	
	*	MAG. 6
BRENDA FELGER, ET AL.	*	
	*	

****

DECLARATION OF THOMAS A. MOORE, M.D.

THOMAS A. MOORE, M.D. declares:

1. He is the Plaintiff in the above and foregoing proceeding.

2. Between October, 1980, and April, 1990, he lived and resided with his wife, Dorothy Lynn Moore, at 207 Oak Alley Drive, Houma, Louisiana.

3. The home located at 207 Oak Alley Drive was owned by Dorothy Lynn Moore, a fact that was known by the Internal Revenue Service.

4. At no time did Dorothy Lynn Moore have assets in her name that belonged to Dr. Moore as his nominee, and at no time since May 31, 1985 did she have property in her

name as Dr. Moore's transferee, that is to say, she had her own separate and paraphernal property, a separate income, and separate assets, some of which he had given her out of love and affection as his wife. More particularly, he never owned through Dorothy Lynn Moore as his nominee: a computer system, a stereo system, a sofa, various living and dining room furniture, a china hutch, bedroom furniture, a large opal, small opal, ruby or an emerald.

5. He never denied consent to any Revenue Office to enter his home for the purpose of inventory and seizure. Indeed, in 1987, Defendant Napveaux did enter his home and examine its contents.

6. He denies that on March 22, 1990, the date of Defendant Felger's Declaration, that he was not in compliance with the district court's enforcement Order of the First Summons. In fact, on March 7, 1990, the district court found tht he was in substantial compliance.

7. He denies that the seizure of property in 1985 was for tax liability for the year ending December 31, 1976.

8. He denies that he ever transferred assets to his children or relatives.

9. He denies that he ever maintained his practice in a secret manner, that he did not maintain an office; or that he concealed any records of his patients and services rendered.

10. He denies that since his marriage to Dorothy Lynn Moore, "all of the family's assets have been titled in

the name of Mrs. Moore,even though the tax debtor's income is the source for Mrs. Moore's income and the assets accumulated by the family."

11. On or about March 6, 1989, he was served with an IRS summons requiring production of patient and billing records for the time period of September 1, 1988 to March 17, 1989.

12. He refused to produce the records on the grounds of the physician/patient privilege.

13. He did not testify on February 21, 1990, or any other time, that he never maintained patient or billing records; only that the records contained diagnostic information and were discarded after a certain period of time following payment or termination of treatment.

14. On March 29, 1990, approximately twenty federal agents came to his home and conducted a lengthy, exhaustive and destructive search and seizure of his things and things belonging to his wife. Some of the agents went directly to his office within the house and began immediately to search anad seize his private books and papers. His lawyer, Charley Schrader, protested that the records were not specified in the Writ of Entry. At this point, one agent threatened to arrest his lawyer if he continued to protest. In mid-afternoon, Mr. Schrader returned to the house with affiant, at which time it was discovered that some of the Defendants were in the process of sealing the records in boxes. Mr. Schrader again protested that the records were not specified in the Writ of Entry and that the Defendants were exceeding the scope of their authority. The Defend-

ants then loaded the sealed boxes and removed them from the house. Later that afternoon, some of the Defendants returned the boxes to the house, but at no time were the records unboxed or replaced in the locations from which they were seized.

15. During the entire course of the search and seizure, the Defendants made no effort to determine which items belonged to him and which items belonged to Dorothy Lynn Moore. Indeed, the Defendants refused to consider any evidence demonstrating that items being seized were not assets of Dr. Moore being held by Dorothy Lynn Moore as his nominee. The majority of the items seized were subsequently returned to Dorothy Lynn Moore because they were wrongfully seized. (Exhibit A).

16. The Defendants seized men's and women's clothing, firearms, paintings, silverware, wine, liquor, china, pots, pans, kitchen utensils, computer discs, records, books, private journals, and other such items that were not particularly described in the Writ of Entry. Attached hereto as Exhibit B is the inventory of items seized prepared by the Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of March, 1993.

/s/ Thomas A. Moore, M.D.

THOMAS A. MOORE, M.D.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF BRENDA FELGER

BRENDA FELGER declares:

1. My name is Brenda Felger. I had been a Revenue Officer with the Internal Revenue Service ("Service") for approximately 5 years as of March 29, 1990. My post of duty was in Houma, Louisiana. My total career with the Internal Revenue Service spanned 12 years. I left the employment of the Service as of February 21, 1992. Since then I have been a salesperson and bookkeeper for my husband's business.

2. My duties as a Revenue Officer included collecting delinquent accounts and delinquent returns according to law. At times, as a last resort, I would be forced to take certain enforced collection actions that included seizure of assets belonging to tax debtors.

3. As a Revenue Officer, in February 1990, I received

accounts to be collected from Dr. Thomas A. Moore, M.D. Right away, I became embroiled in summons enforcement proceedings, and requests for nominee liens with respect to the tax debtor's spouse, Dorothy Lynn Heaslip Moore, and a corporatioin, Q-B Tek, Inc. As part of the nominee liens request, I was to seize all assets being nominally held by Mrs. Moore and Q-B Tek, Inc. In early March 1990, I received the necessary approval to take such actions. I proceeded to secure writs of entry to accomplish my task.

4. On March 22, 1990, the writs of entry were approved and signed by United States Magistrate Alma L. Chasez. With this approval, I began to make necessary arrangements to take possession of assets in satisfaction of a tax debt totaling more than 1.2 million dollars.

5. In preparing to take possession of vehicles, household goods, jewelry and real estate, I knew that I would need more than the usual 2 persons necessary for seizure actions,and secured permission to have other Internal Revenue Service employees assist me. In addition, because of the tax debtor's history of being a "tax protestor" and the knowledge of him being a hunter, I felt it necessary to receive additional protection through the Criminal Investigation Division of the Internal Revenue Service. I secured permission for that additional protection.

6. This particular tax debtor had repeatedly challenged and attempted to stop any and all actions taken by the Service; and because of this, I felt it to be appropriate to have easy access during the seizure actions to an attorney from the District Counsel of the Internal Revenue Service

and an Assistant U.S. Attorney. That approval was also secured, and attorney Stevens Moore from District Counsel and Jill Ondrejko from the U.S. Attorney's office in New Orleans made plans to be in Houma on March 29, 1990.

7. I conducted a meeting on March 28, 1990, with all of those who were to take part in the seizure actions. At this time, I went over the writ of entry and the exact purpose of our actions. Each person or team was to do a specific task. Tasks included going to certain banks in the area to levy against bank accounts, IRAs, savings accounts, safe deposit boxes, etc. I do not recall how many teams were involved; however, after each team finished at the banks, they were to proceed to the residence of the tax debtor to assist with inventorying assets. At this meeting I answered all questions and concerns and made it clear that the purpose of our actions were to secure assets that would be used in satisfying the tax debt of Dr. Moore.

8. On March 29, 1990, all persons involved met at 7:00 a.m. at the Internal Revenue service office in Houma. At approximately 8:30 a.m. the necessary Notices of Federal Tax Liens were filed in Terrebonne Parish. At that point, the teams dispersed to perform their assigned duties. The two attorneys stayed at the office in order to answer any team's legal concern, should any arise.

9. At approximately 9:00 a.m. Revenue Officer Eugene Nepveaux, Criminal Investigation Agents D. Philip Guilott and Louis Oubre, III, and myself arrived at the residence of Dr. and Mrs. Moore located at 207 Oak Alley Drive, Houma, LA 70360. Mrs. Moore answered the

door, and I proceeded to explain the purpose of our visit. Mrs. Moore was quite upset and got Dr. Moore.

10. Upon entering the home, I handed a set of writs of entry to both Dr. and Mrs. Moore along with copies of the Notices of Federal Tax Liens. I explained the purpose of our visit was to seize all asssets in the name of Dorothy Lynn Heaslip Moore and Q-B Tek, Inc., held as nominees of Dr. Moore. I explained that the writs fo entry gave us the authority to enter the premises. Dr. and Mrs. Moore began reading their copies of the writs. I further explained that others were taking actions to seize a quarter-boat, certain vehicles, banks accounts, IRAs, etc. Dr. and Mrs. Moore protested the IRS actions. They contacted attorney Charley Schrader, who arrived at the residence shortly thereafter. I re-explained the situation to Mr. Schrader, and he also protested the actions.

11. At this point the other IRS employees began to arrive at the residence to take inventory. I began concentrating on inventorying the assets. Charley Schrader and Dr. Moore continually tried to interrupt myself and the other employees. At one point I was assisted by Agent Oubre in telling Mr. Schrader that if he was going to interfere with our actions, then Mr. Oubre would have to arrest him. Mr. Schrader had been trying to contact Magistrate Chasez but to no avail, so he stated at this time that if arresting him would bring him before Magistrate Chasez then maybe he should be arrested. After that, Mr. Schrader let us alone. At some point around this time, Dr. Moore requested that he be allowed to take a shower since the Service woke him; I obliged him.

12. There were approximately 22 people present at the residence including my group Manager, Henry McKinell, and Branch Chief James Valentine. I continued to answer questions the employees had as they inventoried. Over $3,000.00 in cash was found throughout the home, in drawers and in closets. A floor safe was found hidden under the carpet in Dr. Moore's closet. The safe contained various jewelry items and twelve 100 oz. silver bars.

13. I had several conversations with Dr. and Mrs. Moore, mostly dealing with their anger over the IRS actions. Mrs. Moore felt that we couldn't take the actions we were taking and she repeatedly stated that all the assets being seized were hers and not Dr. Moore's. She stated she couldn't understand how we could live with ourselves after taking this sort of action.

14. Dr. Moore was concerned over certain items being seized. He felt that certain items should automatically be given to him or Mrs. Moore. I took the position that the only items not to be seized would be those exempt by law. I advised Dr. Moore that items might be released later if appropriate. I felt that Dr. Moore's actions were simply delay/stall tactics. I also felt that Dr. and Mrs. Moore had already removed certain jewelry items without my knowing and I wasn't going to take the chance of having anything else removed.

15. In our search for assets to satisfy a huge tax debt, we found a closet full of some sort of wine collection, at least two dozen weapons (guns, rifles, etc.), and some sort of coin collection. I personally inventoried a GMC Van, a Toyota Supra, a Rolls Royce and the coin collection, and

removed items from the floor safe. I also made an attempt at searching Mrs. Moore's luggage as I allowed her to pack some clothing items to be removed from the home to make sure she did not take any assets subject to seizure from the home.

16. I remember that sometime during the seizure, certain records were also located by one of the IRS employees. I was working on inventories, descriptions and the like, and I had nothing to do with locating or reviewing the records. I do recall that the attorneys advised that a search warrant be secured to allow the Service to remove the records located which represented Dr. Moore's account receivable information. Following such advice, the search warrant was obtained.

17. Some employees left the tax debtor's home between 3:30 and 8:30 p.m., but I and a few others stayed until well after midnight. We returned to the residence on March 30 at approximately 8:30 a.m. to finish inventory and storage packing. We completed everything and left the home at approximately 11:30 a.m.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13 day of January, 1993.

/s/ Brenda Felger

BRENDA FELGER

APPENDIX I

EXCERPT FROM REPLY BRIEF FOR THE APPELLANT

93-3271

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH DISTRICT

- 12 -

4. Finally, Taxpayer's contention (Br. 27) that the District Court properly denied the defendants' motion for summary judgment "because material issues of fact existed as to whether

- 13 -

the defendants could avail themselves of qualified immunity" is incorrect. As our opening brief makes clear, we have argued that none of the defendants' conduct gave rise to a constitutional violation in the first instance. Failing that, there is no basis on which the defendants could be found not to be entitled to qualified official immunity. Further factual material would not assist a reviewing court in evaluating the merits of these arguments. Indeed, as a factual matter, the record in the instant case clearly contains sufficient factual material in the form of affadavits from all of the individual defendants setting forth just what each one was doing at the time relevant to the suit. There is little more that could be brought out in a full-scale trial with respect to each defendant's conduct.

APPENDIX J

Thomas A. MOORE, M.D.,
Plaintiff-Appellee,

v.

Brenda FELGER, et al.,
Defendants-Appellants.

No. 93-3271.

United States Court of Appeals,

Fifth Circuit.

April 29, 1994.

Taxpayer-psychiatrist sued Internal Revenue Service (IRS) agents in *Bivens* action alleging that agents' seizure of patient files and disks as evidence of perjury pursuant to writ of entry to seize property subject to federal tax liens violated his Fourth Amendment rights. The United States District Court for the Eastern District of Louisiana, Frederick J.R. Heebe., J., denied agents' summary judgment motion. Agents appealed. The Court of Appeals, Harlington Wood, Jr., Circuit Judge sitting by designation, held that: (1) writ of entry allowed agents to seize taxpayer's desk and to disassemble it in order to remove it from residence, and thus, agents had lawful right of access to desk in which they discovered patient records; (2) evidence of perjury was immediately apparent when IRS agents found file folders and disks in taxpayer's desk

since agents knew taxpayer told district court that he kept no patient records, and thus, agents were not liable to taxpayer in *Bivens* action for seizing disks and folders; and (3) at time of search of desk, inadvertent discovery requirement was not clearly established for purposes of qualified immunity analysis.

Reversed and rendered.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before WOOD,* SMITH, and DUHE', Circuit Judges.

HARLINGTON WOOD, Jr., Circuit Judge:

This civil suit against several IRS agents stems from years of the recalcitrant conduct of a tax protester. Thomas A. Moore, a Louisiana psychiatrist, failed to pay his taxes for a number of years. As a result, he owed over one million dollars to the IRS, which he refused to deliver. The IRS requested patient records from Moore to determine if Moore's patients owed him for psychiatric services rendered, but Moore testified under oath that he kept no such records.

[1] The IRS asked Moore for permission to search his house for property subject to levy in satisfaction of his tax

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* Circuit Judge of the Seventh Circuit, sitting by designation.

liabilities, but Moore refused the IRS request. As a result, the IRS sought a Writ of Entry from Magistrate Judge Alma L. Chasez to search Moore's residence for property subject to levy, including furnishings and various types of jewelry, and to seize the property discovered.[1] The Magistrate Judge found that the IRS motion was supported by probable cause, and therefore granted the Writ of Entry.

IRS agents searched Moore's residence and premises pursuant to the Writ of Entry, finding a Rolls Royce and two other vehicles, thousands of dollars in cash, jewelry, furniture, and other miscellaneous valuables. One of the pieces of furniture found was Moore's office desk, which was too large to remove for seizure without its disassembly. While preparing to disassemble the desk for seizure, an agent found over one-hundred file folders inside, each with a different person's name on the label. The agent also discovered numerous computer disks nearby. The agent, who was familiar with Moore's testimony that he kept no patient records, inferred that the files and disks might be patient records and therefore evidence of perjury.[2]

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[1] District courts can issue orders, upon *ex parte* application by the government, to enter private premises to seize property subject to federal tax liens. *See* 26 U.S.C. § 7402(a); *see also United States v. Campbell*, 761 F.2d 1181, 1186 (6th Cir.1985); *In re Carlson*, 580 F.2d 1365, 1373 (1978). Those orders, however, are subject to Fourth Amendment limitations. *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 354, 97 S.Ct. 619, 629, 50 L.Ed.2d 530 (1977).

[2] Whether the agent examined the contents of the files is discussed *infra*.

After notifying the other agents and consulting with an IRS attorney and an Assistant United States Attorney, the agents sought and received a warrant permitting seizure of the files and disks. After seizing the files and disks pursuant to the warrant, the IRS discovered 276 records, including 153 patient records and 34 invoices.

In light of the agents' discovery, Moore entered a pre-trial diversion program in which he accepted responsibility for having made false material declarations before the district court during contempt proceedings regarding his record keeping. At that time, Moore did not contend that the search was unconstitutional. Instead, Moore later sued the agents under the authority of *Bivens v. Six Unknown Federal Narcotics Agents,* 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), for twenty million dollars.

The agents moved for summary judgment based on qualified immunity, and Moore responded by claiming that several disputed factual issues existed. Moore contended that as a factual matter: (1) the agents did not discover the records inadvertently; (2) the Writ of Entry did not permit the agents to seize patient records; and (3) it was not immediately apparent that the records constituted evidence of perjury. The district court denied the agents' motion because of the second and third of these disputed factual issues.[3] The IRS agents now appeal from that denial, and Moore contends not only that the district court properly

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[3] The district court did not address the first issue, inadvertence, because two months after the seizure the Supreme Court eliminated the requirement that under the plain view doctrine discoveries must be inadvertent. *See Horton v. California,* 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990).

denied the motion for summary judgment, but also that we lack jurisdiction to hear an appeal at this stage of the litigation.

I. JURISDICTION

[2] As we would have no authority to discuss other issues if this court lacked appellate jurisdiction, we must address that issue first. Moore contends that this court never can hear an appeal from a pre-trial order denying a qualified immunity defense when the facts of the case are contested. That argument is without merit.

[3] As a general rule, pre-trial denials of qualified immunity defenses are appealable as final orders. 28 U.S.C. § 1291; *see also Mitchell v. Forsyth*, 472 U.S. 511, 525, 105 S.Ct. 2806, 2814, 86 L.Ed.2d 411 (1985). That rule does not lose force simply because this court considers the factual allegations composing the claim for relief. *Enlow v. Tishomingo County*, 962 F.2d 501, 508-09 (5th Cir.1992); *Mitchell*, 472 U.S. at 529 n. 10, 105 S.Ct. at 2817 n. 10. This court has exercised appellate jurisdiction when factual disputes relevant to the district court decision on the qualified immunity question were resolvable based on the record. *See, e.g., King v. Chide*, 974 F.2d 653, 656 (5th Cir. 1992) ("We find the record before us adequate to the determination of the necessary fact questions" relevant to the district court decision denying qualified immunity). Were the rule otherwise, plaintiffs always could defeat appellate jurisdiction merely by asserting the existence of a disputed fact, effectively erasing 28 U.S.C. § 1291. Because we can resolve all relevant factual disputes in this case on the record, as will be discussed *infra*, appellate jurisdiction is

proper.

II. THE SEARCH

A. Legal Background

[4] The central issue in this appeal is whether the IRS agents could open Moore's desk without a search warrant specifically allowing them to do so. If opening Moore's desk was permissible, the subsequent seizure of files also was legal given that the IRS agents seized the files pursuant to a valid warrant that particularly described the files. The warrantless search of Moore's desk was proper if: (1) the agents had a right to be in Moore's house; (2) the files were in plain view; (3) the agents had a lawful right of access to the desk drawer in which the agents discovered the files; and (4) the incriminating nature of the files was immediately apparent. *See Horton v. California*, 496 U.S. 128, 136-37, 110 S.Ct. 2301, 2307-08, 110 L.Ed.2d 112 (1990).

This appeal, however, is not about whether the patient records discovered in Moore's files should be suppressed in a criminal context—Moore did not challenge the constitutionality of the search when he was charged with contempt. Rather, this appeal is about whether the officers who discovered the files should be exposed to liability in a civil suit for their actions. The standard of conduct is less exacting for the latter than the former.

Federal officers performing discretionary acts are immune from suits for damages if their conduct "does not violate clearly established statutory or constitutional

rights of which a reasonable person would have known" *Buckley v. Fitzsimmons*, ____ U.S. ____, 113 S.Ct. 2606, 2613, 125 L.Ed.2d 209 (1993). The plaintiff has the burden to come forward with evidence that creates a genuine issue as to whether the defendants' conduct was objectively unreasonable in light of clearly established law. *Cronen v. Texas Dept. of Human Services*, 977 F.2d 934, 939 (5th Cir. 1992). Thus, if the agents either violated none of Moore's rights, or if those rights were not clearly established rights of which a reasonable person would have known, the agents are entitled to qualified immunity.

B. The Plain View Doctrine

Regarding whether the agents had a right to be in Moore's house, the first question of *Horton*, 496 U.S. at 136-37, 110 S.Ct. at 2307-08, the district court answered this question affirmatively. The record in this case reveals that IRS agents legally entered Moore's house pursuant to a validly executed Writ of Entry, and Moore does not challenge that point. We therefore are satisfied that the district court found correctly regarding the first prong of *Horton*.

[5] The next question under *Horton* is whether the files were in plain view, *Id.* Once the agents opened the desk, they could see the files clearly. The files were not obscured by other articles in the desk, but instead were hanging so that they were immediately apparent when the desk was opened. Thus, if the agents had a right to open the desk drawer, which is discussed *infra*, the contents were in fact in plain view. The other components of *Horton* merit closer scrutiny.

1. Lawful Right of Access

[6, 7] Moore contends that the Writ of Entry did not specify that the agents could seize patient records. He is correct, but the point is irrelevant. Agents who have a lawful right of access to an area do not have to look the other way if they discover evidence of criminal conduct not specified in a search warrant. *See Horton*, 496 U.S. at 136-37, 110 S.Ct. at 2307-08. That is the central principle of the plain view doctrine.

[8] Moore further contends that the Writ of Entry did not specify that the agents could seize the particular desk in which the agents discovered the files. Although the Writ of Entry did not name each individual piece of furniture, doing so was impossible—Moore would not let the IRS agents into his house. The Magistrate Judge found that probable cause existed to believe that Moore's house had furnishings subject to levy inside, a finding Moore does not contest.

Although the Writ of Entry listed several specific types of furniture, it specifically stated that it was not limited to those items, and desks certainly are furnishings. *See American Heritage Dictionary* 540 (2d ed. 1982) ("**furnishings**. The furniture, appliances, and other movable articles in a home or office."). Given the size of the desk, it was reasonable to disassemble it for transportation from Moore's residence. Implied in the Writ of Entry was the power to do what was necessary to effectuate the seizure, and disassembling the desk was necessary. The agents therefore reasonably believed, and were correct in their belief, that they were entitled to open the desk.

[9] Moore contends that the agent who opened the desk believed that the desk might contain patient records. What the agent expected to find when he disassembled the desk, however, is irrelevant under *Horton*.[4] As the Court noted in *Horton*, "[t]he fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in an area and duration by the terms of a warrant...." *Id.* at 138, 110 S.Ct. at 2309. Although the IRS agents were acting under the authority of the Writ of Entry rather than a warrant, as was at issue in *Horton*, the Writ of Entry allowed the agents to seize Moore's desk, satisfying the "lawful right of access" prong of *Horton*.

2. Immediately Apparent Evidence of Perjury

[10] Moore contends that evidence of perjury was not immediately apparent from looking at the file folders and disks. First, he contends that he did not testify that he kept no patient records. Although this is a "disputed fact," it cannot support the denial of summary judgment because it runs contrary to the evidence in the record. The district court, when holding Moore in contempt, told him that "[y]ou testified that you have deliberately not kept records. You may have done it inadvertently in the past and it got you into trouble, now you are doing it deliberately and there are no records...." Thus, the district court was under the impression that Moore testified that he kept no patient records.

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[4] The fact that *Horton* eliminated the inadvertence requirement of the plain view doctrine is discussed further *infra*.

The district court formed that impression based on the following exchange. The district court asked, "Dr. Moore, you don't have any administrative records, is that correct?" Moore replied, "No, sir, but this is about to be corrected." Based on Moore's statements, it was reasonable (and accurate) for the IRS agents to believe that Moore testified that he kept no patient records. In fact, after the agents discovered records in Moore's desk (only 22 days later), Moore accepted responsibility for making false declarations before the district court regarding his lack of records. Moore cannot now disavow his admission of responsibility to preserve the viability of his civil suit.[5]

[11] Moore also argues that only the names on the file folders discovered by the agents were immediately apparent, and that evidence of perjury could only be ascertained by opening the folders.[6] Given the particular facts of this case, that argument is without merit. The IRS agent who discovered the files knew that Moore was a psychiatrist, and was familiar with Moore's testimony that he kept no patient records. It hardly requires great mental acuity to ascertain that over one-hundred file folders labelled with different names in the office desk of a psychiatrist might constitute patient records, records that not only might be evidence of perjury, but also a collection asset to the IRS. We are satisfied with the agent's affidavit that he

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[5] Of course, there exists the corroborating proof of the 276 records. Moore never claimed that he created those records in the twenty-two days preceding the search (a claim that would have stretched his credibility to the limits).

[6] This argument is not an "immediately apparent" argument as much as it is an argument that the records were not in plain view.

did not open the files until after obtaining a search warrant, given that Moore presented no contrary evidence.[7]

This case is not like *Arizona v. Hicks,* 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987), in which an officer investigating a shooting moved a stereo from against the wall to check the serial number printed on its rear in order to determine if the stereo was stolen. The officer in *Hicks* had no probable cause to believe that the stereo was stolen, *id.* at 325-26, 107 S.Ct. at 1152-53, and the mere existence of a stereo does not immediately cause one to think "stolen." Here, however, the discovery of over one-hundred file folders individually labelled by name in the desk of a psychiatrist would immediately cause one to think "records." Knowing that Moore said there were no records, the immediately following thought is "perjury." The mental leap required to conclude that patient records may constitute evidence of perjury under these particular facts is no greater than the leap required to conclude that a bag of white powder seized in a gang's hideout may constitute evidence of possession of a controlled substance. *See United States v. Jolio Prandy-Binett,* 995 F.2d 1069, 1073 (D.C.Cir.1993).

---

[7] Moore asserted generally that agents "went directly to [my] office and began immediately to search and seize [my] private books and papers," but Moore neither contended that an agent opened the folders in question, nor did he witness such conduct. Moore claimed that his attorney witnessed some of the conduct in question, but again does not state that the attorney saw anyone open the files and examine their contents. Additionally, no affidavit appears in the record from the attorney Moore claims witnessed the conduct. Moore did not meet his burden to come forward with evidence creating a genuine issue of material fact on this point. *See Cronen,* 977 F.2d at 939.

3. Inadvertent Discovery

[12] Moore contends that the IRS agents specifically searched for patient records rather than property for seizure. *Horton*, however, eliminated the inadvertent discovery requirement formerly associated with the plain view doctrine. 496 U.S. at 141-42, 110 S.Ct. at 2310-11. As such, Moore cannot claim that the agents violated his constitutional rights for the purposes of a *Bivens* action—the right to which Moore claims entitlement no longer exists. *Siegert v. Gilley*, 500 U.S. 226, ____, 111 S.Ct. 1789, 1793, 114 L.Ed.2d 277 (1991) (determining "whether the plaintiff has asserted a violation of a constitutional right at all" is a "necessary concomitant" to determining whether the defendants violated a clearly established right); *see also Spann v. Rainey*, 987 F.2d 1110, 1114 (5th Cir.1993) (officers are entitled to qualified immunity if they did not violate rights secured by the Constitution). The district court correctly omitted any analysis of inadvertent discovery.

[13] Even under the law as it existed at the time of the search, the inadvertent discovery requirement was not clearly established for the purposes of qualified immunity analysis. *See Buckley*, ____ U.S. at ____, 113 S.Ct. at 2613. Several courts had questioned the inadvertent discovery requirement before the search of Moore's residence took place, and only a plurality of the Supreme Court originally propounded the requirement. *See Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). The Supreme Court had granted certiorari in *Horton* by the time of the search, further casting doubt on the continuing validity of the inadvertence requirement at the time. Thus

even if a defunct constitutional right could support a *Bivens* action, the agents would be entitled to qualified immunity because the right was not clearly established at the time of the search.

III. CONCLUSION

This court has jurisdiction to decide the issues in this case. Moore has raised no factual issues which cast doubt on the constitutionality of the IRS agents' actions. The agents entered Moore's residence pursuant to a valid Writ of Entry,[8] discovered Moore's files in plain view while executing the Writ of Entry, and seized the contents of the files pursuant to a valid warrant. The district court therefore should have granted summary judgment in favor of the defendants in Moore's civil action based on qualified immunity.

The order denying summary judgment is REVERSED, and judgment is RENDERED in favor of the defendants.

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[1] One agent named in Moore's suit, MacDuffie Herrod, was on leave during the events in question, and Moore agrees that summary judgment should have been granted as to defendant Herrod. That conclusion, however, loses importance given that the district court should have granted qualified immunity in favor of all of the IRS agents.

APPENDIX K

APPELLANTS BRIEF TO SHOW HIS COMPLIANCE WITH CIVIL SUMMONS AND IN OPPOSITION TO THE RULE OF CONTEMPT

UNITED STATES of AMERICA, ET AL.,

Plaintiffs-Appellees,

versus

THOMAS A. MOORE, M.D.

Defendant-Appellant

On Appeal from the
United States District Court
Eastern District of Louisiana

CERTIFICATE OF INTERESTED PERSONS

This Certificate of Interested Persons is filed on behalf of Thomas A. Moore, M.D., pursuant to Local Rules of the Fifth Circuit 28.2.1

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluated possible disqualification or recusal.

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STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully submits that oral argument of this case would be appropriate in the event the Court has reservations arising out of Pro Se Counsel's unfamiliarity with some aspects of form in the presentation of his written brief.

This case involves complicated issues surrounding the actions of various Agencies and numerous employees of the Government: administratively, procedurally, and legally, in the pursuit of gaining Appellant's compliance with A Civil Summons. Appellant's oral argument would permit the Court the opportunity to thoroughly review the facts and actions of both sides which led to the ruling of Contempt by Hon. Judge Robert F. Collins, which is the subject of this Appeal.

Appellant avers there are important legal issues which involve the propriaty and motivation of the officials in this case in the use or misuse of their discretionary powers. The possibility of overt or covert, intentional or mistaken, misuse and malipulation of the power of the Courts is an issue which may beg further exploration.

TABLE OF CONTENTS

Page

CERTIFICATE OF INTERESTED PERSONS i

STATEMENT REGARDING ORAL ARGUMENT ..iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES v

STATEMENT OF JURISDICTION 1

STATEMENT OF ISSUES PRESENTED FOR REVIEW 2

STATEMENT OF THE CASE 3-14

Footnotes

#1 15
#2 17
#3 19
#4 & #5 20
#6 23
#7 24
#8 & #9 26
#10 27

SUMMARY OF THE ARGUMENT 3

CONCLUSION 13

CERTIFICATE OF SERVICE 28

TABLE OF AUTHORITIES

Cases

102 S. Ct. 2727 (1982) Ante. at 2737, 2739
102 S. Ct. at 2739-2740

Pizzarello v. U.S., at 408 F. 2nd 586, also at 408 F.2d 579 (2nd Cir. 1969), *cert. denied,* 396 U.S. 986, 90 S.t. 481 (1969

Fifth Circuit- U.S. v Haydel, 649 F. 2d 1152 (5th Circ. 1981), *reh. den.* 664 F.2d 84 (1981), *cert. denied.* 455 U.S. 1022 72 L.Ed.2d 140, 102 S. Ct. 1721

Rawlings v. Kentucky, 448 U.S. 98 (1980)

U.S. v. Showalter, 858 F.2d 149 (3rd Cir. 1988)

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U.S. v. Mahoney, 712 F.2d 956 (5th Cir. 1983) *cert. denied,* 435 U.S. 923, 98 S.Ct. 1485, 55 L.Ed.2d. 516—429 U.S. at 355

U.S. v. Mahoney, 712 F.2d 956 (5th Cir. 1983) *cert. denied,* 104 S.Ct. 3590, 82 L.Ed.2d 887

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Wong Chung Che v. Ins., 565 F.2d 166, (1st Cir. 1977)

Vanderlinden v. U.S., 502 F. Sup 693 (S.D. Iowa 1980)

Donaldson v. U.S.

U.S. v. Allen Williams & Rudolph Wittenberg

U. S. v. Powell

U.S. v. LaSalle National Bank

Oklahoma pPress publishing Co. v. Walling

U.S. v. Dardi

U. S. v. Harrington

Eliot v. Perez

STATEMENT OF JURISDICTION

This Court has jurisdiction of this appeal pursuant to 28 U.S.C. #1291 providing that the Courts of Appeal have jurisdiction of appeals from all final decisions to the District Courts of th United States.

STATEMENT OF ISSUES FOR REVIEW

I

Whether the District Court consistently displayed an understanding of what the Summons sought and how compliance could be demonstrated.

II

Whether the Court became confused by the issuance of a second Summons on March 5,1990, not at issue in these proceedings.

III

Whether the Court's order to produce further (non-existent) documents placed an impossible burden on the Appellant.

IV

Whether the Court's order to the Appellant of May 30,1990, was consistent with the Court's statements of March 7, 1990, when the Court stated that the burden of seeking further proof of the Appellant's claim of compliance was on the Internal Revenue Service.

V

Whether the Court erred in allowing the introduction of records which Appellant's counsel alleged were gained through illegal search. Whether this error was compounded

by the admission of these records after the Affidavit and testimony of Agent Brenda Felger was withdrawn by the Government.

VI

Whether anyone other than the Appellant realized that the records seized materially changed between March 7, 1990 and March 29,1990 as the Appellant and his counsel had indicated to Agents Brenda Felger and Steve Fanguy on March 19, 1990, thereby making the whole issue of the seized records one of comparing "Apples" to "oranges".

VII

Whether the conduct of counsel for the Government was an elaborate attempt to bury the over zealous acts of those involved in the knowing, egregious, and malicious actions of March 29 and 30, 1990.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

90-3426

UNITED STATES of AMERICA, ET AL.,
Plaintiffs-Appellees,

versus

THOMAS A. MOORE, M.D.
Defendant-Appellant

APPELLANT'S BRIEF TO SHOW HIS COMPLIANCE WITH CIVIL SUMMONS AND IN OPPOSITION TO THE RULE OF CONTEMPT

Summary of Argument

Now into Court comes Thomas A. Moore, M. D., Pro Se, to respectfully present evidence that he has complied with the Internal Revenue Service Summons as ordered by the UNITED STATES DISTRICT COURT, SECTION: "C" (5), on October 20, 1989, and therefore the Court erred in the Ruling of Contempt entered by the Hon. Judge Robert F. Collins on June 6, 1990 in Civil Action No: 89-2451. Defendant- Appellant, therefore, prays for relief from the Ruling of Contempt.

Argument

This action arises out of a request by the Internal Revenue Service for Judicial enforcement of an Internal Revenue Service Summons issued to the Defendant-Appellant (Dr. Moore) on March 6, 1989, to appear before Agent Eugene Nepveaux on March 17, 1989.

The Summons requested:

A. All administrative documents or records relating to Accounts Receivable of Thomas A. Moore, M.D. from September 1, 1989 through March 17, 1989, which reflect

    1. name of patient/client
    2. Address and telephone number of patient/client
    3. Amount owed by patient/client as of the date such testimony is given

B. All administrative documents or records relating to Accounts Receivable of Thomas A. Moore, M.D. from September 1, 1988 through March 17, 1989, which reflect

    1. name of Insurance Co. or other indemnifier of patient/client
    2. Address and telephone number of Insurance Co. or other indemnifer
    3. Amount owed by Insurance Co. or other indemnifier as of the date such testimony if given

C. All administrative documents of records relating to Statements of Account which reflect the name and/or the address and/or the telephone number of any person receiving the professional services of Thomas A. Moore, M.D. from September 1, 1988 through March 17, 1989.

Dr. Moore's primary objection was that the information sought by the Summons was protected as coming within his "zone of privacy" as a psychiatrist, and would therefore violate the physician/patient privilege. The Court's order enforcing the First Summons is currently on appeal before the Fifth Circuit Court of Appeals. On December 28, 1989, however, the Fifth Circuit denied a stay order.

On January 9, 1990, Dr. Moore and his counsel, Mr. Charley Schrader, (Mr. Schrader) met with Agent Eugene Nepveaux and Dr. Moore persisted in his objections to the Summons, citing what he felt was a conflict with Louisiana law, and fearing that compliance may cause harm to those to whom he had special obligation, i.e., his patients. The government filed a rule to show cause why Dr. Moore should not be held in contempt, and a hearing was set for February 21, 1990.

Dr. Moore, still seeking to protect the privacy of those to whom he had special obligation, i. e., his patients, while at the same time not wishing to appear contumacious, delivered a number of documents to the office of Hon. Judge Robert F. Collins on February 20, 1990. These documents in-

cluded; a copy of his patient service log book, a copy of the billing form used by his office *which contained the patient's diagnosis,* and a listing of the patients treated from September 1, 1988 to March 17, 1989, the period covered in the Summons.

A review of the Court Transcript of the February 21, 1990 Hearing reveals considerable confusion about the nature of what was actually being sought by the Summons.[1] This continued in the May 16, 1990 Hearing.[2] Review also notes Dr. Moore's statements of his willingness to comply to the best of his ability.[3] Following insstructions by the Court to Dr. Moore,[4] the Court reset the matter for March 7, 1990, (see minute entry of February 26,1990) to allow Dr. Moore to comply.

When neither Dr. Moore nor his counsel, Mr. Schrader were contacted by Agent Nepveaux by late the next week. Mr. Schrader contacted agent Nepveaux at the Lafayette office of the Intenal Revenue Service on either Thursday, March 1st, or Friday, March 2nd, 1990. Mr. Schrader was informed that the Case had been trasferred to Agent Brenda Felger in the Houma office of the Internal Revenue Service and a meeting would be set with her.

Dr. Moore and Mr. Schrader met with Agent Felger the following Monday, March 5, 1990 to demonstrate how the documents produced for the Court were used to calculate and generate billing, and to answer any other questions Agent Felger posed. Agent Felger asked Dr. Moore to go home and calculate out the individual amounts per patient and return the next day. In the meeting Tuesday, March 6, 1990, Agent Felger indicated that com-

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Footnote 1 on page A-178
Footnote 2 on page A-180
Footnote 3 on page A-181
Footnote 4 on page A-183

pliance had been met to her satisfaction.[5]

At the Hearing the following day, March 7, 1990, Ms. Jill Ondrejko, counsel for the government, appeared to have her own agenda. She became upset with the fact that the information obtained was old and would not likely result in significant collections.[6] She attempted to have Dr. Moore held in contempt *in advance* for a Summons given on March 5, 1990 for an appearance on March 19, 1990 for more current information.

The Court seemed exasperated that Agent Felger had not used the authority granted her agency by the Court.[7]

Dr. Moore testified he had obtained verification of the list of patients seen in the time covered by the Summons of March 6, 1989, to compare to his patient log by having a list of admissions to his service at Bayou Oaks Hospital prepared by the Medical Librarian of the hospital.[8] Dr. Moore testified he had done everything asked of him in the meeting with Agent Felger.[9]

The Court stated (Page 43, lines 21 through 24: March 7, 1990 Transcript). "**The only purpose of this is to see that you comply with the order that the Court has issued.** The Court is not empowered to get into the issue of the merits of the taxes that you owe."

The court further stated, (Page 45, lines 14 through

Footnote 5 on page A-183
Footnote 6 on page A-186
Footnote 7 on page A-187
Footnote 8 on page A-188
Footnote 9 on page A-189

19: March 7, 1990 Transcript), " I am going to make a finding. I will hold the matter open ***you have complied*** but I can not say that your compliance is complete. There has been a compliance which has just happened with reference to this list, the list has not been investigated to determine its accuracy or its completeness."

Dr. Moore responded, (Page 45, lines 20 &21: March 7, 1990 Transcript). **"I will be happy to verify that— how can we verify that?"**

The Court, (Page 45, lines 22 through 25: March 7, 1990 Trnscript), **"It will be the function of the Internal Revenue Service. I will order you to make yourself available to them."**

Dr. Moore, (Page 46, lines 1 & 2: March 7, 1990 Transcript), "I took an oath and **that list is as complete as the hospital records and my memory will allow."**

The Court, (Page 46, lines 3 through 6: March 7, 1990 Trnascript). "You have a duty to comply with the summons. I will continue the matter as an open matter to be reset ***once further compliance is made by the Internal Revenue."***

Dr. Moore sought some reassurance that the information obtained by the summons would not be used recklessly by the Internal Revenue Service.[10]

The Court's response was, (Page 48, lines 22 & 23: March 7, 1990 Transcript), "That's not the purpose and the Court will do everything to protect those kinds of interests."

The next day, March 8, 1990, Agent Felger sent

Footnote 10 on page A-189

Levies to each and every patient on the lists gained through the Court's enforcement of the March 6, 1989 Summons. No further effort or contact was made with Dr. Moore or Mr. Schrader, to inquire who, if anyone, on the list owed any funds to Dr. Moore. This occurred, despite there own statements. (Agent Felger and Ms. Ondrejko), that the list was now so old as to make it likely useless in the collection action.

It would seem that the Court underestimated the lengths to which Agent Felger and her associates would go to "humble" Dr. Moore.

The only way for the Internal Revenue Service to verify the completeness of the list of patients rendered to the Court by Dr. Moore was to check it against the patient hospital record numbers which Dr. Moore had included on his list. Though Bayou Oaks Hospital had resisted production of patient names, when also summoned by Mr. Nepveaux, (for the same reason of confidentiality cited originally by Dr. Moore), the Hospital's Adminisstration had indicated a willingness to give the corresponding medical record numbers to verify the completeness of his list. Proof of this is that just such a listing was provided to Mr. Michael A. Mayhall, Attorney, acting in Dr. Moore's behalf May 21, 1990. (Exhibit #1)

Alas, Agent Felger never bothered. Instead, she found new enthusiasm in her collection efforts against Dr. Moore, when, on March 14, 1990, without any corroborating inquiry into the facts, she filed Liens against all of the property of Dr. Moore's wife, naming Mrs. Dorothy Lynn Moore by "Fiat" as Dr. Moore's "Nominee".

The above was not known to Dr. Moore and Mr. Schrader when they met with Agents Felger and Steven Fanguy on March 19, 1990. At that meeting the Agents were informed of the formation of Acadiana Psychiatric Services, A Medical Corporation. They were informed of it's purposes and were told that they could participate in and critique the accounting methods which were being developed to give the Internal Revenue Service accountability while safeguarding the confidentiality of the patients. They were also informed that through the operation of the medical corporation, they could collect all the funds generated less only that which the Internal Revenue Service allowed for Dr. Moore's basic living expenses. (Exhibit #2)

On March 29, 1990, at approximately 9 A.M., Agents Felger and Nepveaux, accompanied by two armed Special Agents, forced entry into the home of Mrs. Lynn H. Moore, over her shocked protests, and upon having accomplished entry they presented Mrs. Moore with a *Writ of Entry*, signed by Magistrate Alma Chasez. This *Writ of Entry* was granted on the basis of *Affidavitrs*, sworn "Declarations of a Revenue Officer", signed by Agent Felger, which declared that Mrs. Lynn H. Moore was the "Nominee" of Dr. Moore for all items listed, and an *Esparte Motion* signed by Ms. Jill Ondrejko, Asst. U. S. Attorney.

These Agents were soon joined by sixteen additional Agents who proceeded to scatter throughout the house in a "Helter-Skelter" fashion and, aided by three moving company employees, they began to empty the home of all it's contents. While in the home the Agents conducted a reckless and destructive search of the private papers of

Dr. Moore; and her wholly owned corporation, *Acadiana Psychiatric Services, A Medical Corporation;* Mrs. Lynn H. Moore; and her wholly owned corporation, *Acadiana Family Therapy Center, Inc.* They made, or attempted to make, copies of various documents. They moved out the computer and the computer desk, and packed the records into boxes which they were in the process of sealing when Dr. Moore, who had left the home in the late morning, returned with Mr. Schrader at approximately 3 P.M. Mr. Schrader protested vehemently that the search of records went beyond the scope of the *Writ of Entry.* Dr. Moore and Mr. Schrader left the home after their requests to remove Mrs. Moore's personal journal and her Grandfather's engraved gold-handled umbrella were refused.

Soon afterward, Stevens Moore, District Counsel of the Internal Revenue Service, and Jill Ondrejko, Asst. U. S. Attorney, were summoned to the home. They contacted Special Agent Frederick Boyd in New Orleans, and on the basis of information relayed to him by Stevens Moore and Jill Ondrejko, which was gleaned by them through their prior illegal search, Agent Boyd prepared an Affidavit requesting a Search Warrant to permit them to legally inspect the already illegally packed and sealed documents. The Search Warrant, based upon Agent Boyd's Affidavit, was signed by Magistrate Ivan Lemelle at 5:35 P.M. and then faxed to the Special Agents in Houma. The Agents had been in the house and in the home office where the materials were located for approximately nine hours when they received the document to sanction their previously done deeds.

The egregious, knowing, malicious and wanton ac-

tions of the Agents and Attorneys present have been, and are, the subject of numerous suits. Civil Action, 92-0367, is pending in UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA. (Exhibits # 3, 4, & 5)

This contempt ruling was entered after the Hon. Judge Robert F. Collins resumed Hearing of March 7, 1990 on May 16, 1990 and continued on May 30, 1990. At the Hearing of May 30, 1990, Ms. Ondrejko used the records which had been illegally seized after obtaining a Search Warrant based on materials which had been illegally searched while in the home on a tainted *Writ of Entry.* (Exhibits# 5 & 6) The Court erroneously allowed Ms. Ondrejko to use these materials after she withdrew the Affadavit of Agent Felger re: her confused conclusions about the seized records, along with Agent Felger's court testimony, rather than open the Pandora's Box of the illegality of the Agents conduct on the 29th & 30th of March, 1990. The Court disallowed Counsel for the defendant, Mr. Lemann, the opportunity to expose the illegal and unorthodox conduct of the Agents, thereby creating a double standard.

Despite the statements below:—

The Court (Page 45, lines 22 through 25: March 7, 1990 Transcript), ***"It will be the function of the Internal Revenue Service. I will order you to make yourself available to them."***

The Court, (Page 46, lines 3 through 6: March 7, 1990 Transcript), "You have a duty to comply with the sum-

mons. I will continue the matter as an open matter to be reset ***once further compliance is made by the Internal Revenue."***

--and despite the fact that the sending of Levies on March 8, 1990 to everyone on the list made further investigation of the collection matter moot—
—and despite the fact that no efforts were made by Agent Felger or anyone else to verify the completeness of the list through Bayou Oaks Hospital—

the Court found Dr. Moore guilty of contempt for not producing the records of 24 patients, to whom levies had already been sent.

Conclusion

Argument above alleges:

1. The Court demonstrated poor initial understanding of what information was sought by the summons and the purpose of the information sought.

2. The Court became further confused after the issuance of a second Summons of March 5,1990, which was not at issue in this Contempt Hearing.

3. The Court reversed it's position at the conclusion of the March 7,1990 Hearing, in which it stated further compliance should be the initiative of the Internal Revenue Service, when in The May 30, 1990 hearing, it shifted an impossible burden of proof of compliance onto the Defendant.

4. The court erred in allowing the government to use materials obtained in the illegal search and seizure of March 29,1990 after the government withdrew the testimony and Affidavit of Agent Felger. This error was compounded when Defendant's Counsel was not permited to challenge the legality of the use of these materials.

5. No one at the hearing of May 30,1990, other than the Defendant, grasped the fact that the materials gained through the March 29 & 30,1990 seizure were significantly different from records referred to by the Defendant in the Hearings of February 21, & March 7,1990. These differences are well documented in Exhibit #2

In consideration of the above argument and demonstration of facts, the Defendant-Appellant prays this Honorable Court will find that he made every effort to comply with the Summons of March 6, 1989, and will see fit to reverse the Ruling of Civil Contempt in Civil Action No: 89-2451 made by the Hon. Judge Robert F. Collins and entered against him on June 6, 1990.

Respectfully submitted;

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FOOTNOTES

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1. *From Court Transcript February 21, 1990:*

Page 4, lines 11 through 25.

THE COURT: Lets establish the background of what was called for here. The summons, which issued way back on the 17th day of March, 1989, addressed to Thomas A. Moore, M.D. at 207 Oak Alley Drive, Houma, Louisiana, says you are hereby summoned and rquired to appear before Eugene Nevaro or his designee at the office of the Internal Revenue Service to give testimony and bring with you and produce for examination the following books, records, papers, and other documents relating to persons identified through the period shown. *This is an investigation into the Doctor's tax returns for the years —*

MR. SLATER: No sir.

THE COURT: *Investigation* into the years of 1980, '81, '82, '83, '84, '86 and '87.

MR. SLATER: *That's disputed.*

Page 8, lines 2 through 4

DR. MOORE: ....But as I understood it, I was commanded to bring what I had and not to reconstruct all of this sort of thing. I can give testimony in terms of an attempt to reconstruct amounts owed.

Page 13, lines 10 and 11

DR. MOORE: .....they are not trying to calculate my income here, they are trying to ***collect.***

Page 14, lines 2 through 7

DR. MOORE: Because the only rason to fill in the gaps at this point is not computation of earning. **It is a collection action.**

MR. SCHRADER: But if the Court directs you, you have authorized me to-

DR. MOORE: Yes, I will try to fill in all the gaps that I can, if my memory serves me.

FOOTNOTES (continued)

Footnote 1 continued.*Page 14, lines 15 through 19*

DR. MOORE: I do not have any other records, I would have to interperiate and try — and **for Your Honor' information, the way the thing is, is that it has to do with liability for those years, the years are not under investigation for computation of liability, it is a collection action—**

Page 18, lines 9 through 12

MS. ONDREJKO: Isn't it true that you refused to testify about any of your tax liabilities to the IRS on March 17th?

DR. MOORE: I would be happy to talk about my tax liabilities. I admitted that I owed —

Page 20, lines 24 & 25: Page 21, lines 1 through 3

THE COURT: the only question for the purpose of this hearing is whether or not the subpoena, the summons that issued in this case has been satisfied, I not going into all of the ramifications — we could spend hours and hours on that.

Page 24, lines 18 through 24

THE COURT: This all about money not what treatments you are giving the patient, what their problems or complaints are, *the only question they want to know is how much is your income and what are your expenses and* **what is a proper amount of taxes.**

DR. MOORE: No, **they know that,** they have already taxed me.

Page 25, line 3 through 12

DR. MOORE: **This is a collection action** and —

MR. SLATER: If Your Honor please, may I interrupt for a second. I believe Miss Ondrejko will agreee with me that *the whole purpose of these proceedings is not try and establish income other than for the purpose of taking it, its not trying to find out income tax as such, it is purely a collection, seizure process.*

FOOTNOTES (continued)

Footnote 1 continued

MS. ONDREJKO: *That's correct, Your Honor, its a liability case,* **we know the liabilities, we are just trying to collect them.**

Page 26, lines 8 through 25

THE COURT: Is there any reason, since he is here and available now, I would have him go over to the office of we can furnish you with an office here and supply all the information he has about these matters you have any objection to them getting the documents that you submitted to me, which was a list of patients, saying certain of these patients were at risk as well as photocopies of an appointment book which contained first names and inititals, you would have to figure out which names appear to which initials and you would have to compile all of that and try to figure out how many appointments were for XYZ and you still didn't get to the bottom line, how much money did Dr. Moore collect for the period of times involved. They wanted to know how much was owed by his patients, we still don't know that.

MR. SLATER: Judge Collins, I believe **the bottom line,** as I see it, **is how much is actually owed presently by these patients so that they can get the money from those patients.**

2. *From the Court Transcript, May 16, 1990*

Page 3, lines 3 & 4

ONDREJKO: Q. And for what purpose was that summons issued?

Nepveaux: A. **For the purpose of collection.**

Page 5, lines 16 through 22

Mr. Lemann: Q. And you are no longer the revenue agent assigned to this case, is that correct?

Nepveaux: A. No, sir, I am not.

Lemann: Q. And when were you taken off of this case?

FOOTNOTES (continued)

Footnote 2 continued

Nepveaux: A. January first of this year.

Lemann: Q. January first of 1990?

Napveaux: A. Correct

Page 6, lines 6 through 16

The Court: I have a copy of a summons here, apparently, this is the summons. Can you give us more background on this case? What were you seeking, there are certain years indicated etc., what were you seeking to accomplish by this summons?

Nepveaux: Directing it to me, Judge?

The Court: Yes

Nepveaux: What I was attempting to accomplish was to identify those persons who may owe money to Dr. Moore **for the purpose of levee, collection.**

Page 7, lines 8 & 9

Nepveaux: —**once the assessment is made it becomes a collection issue.**

3. *From the Court Transcript, February 21, 1990*

Page 11, Lines 3 through 9

DR. MOORE: I had the log book and I ran copies of these to show that the names in the book correspond to the list of names that I gave and to the services and what was — what earnings were being accrued at that time were being — would be able to be calculated and I would be happy to sit down with somebody and go over that if in fact the Court decides that this should be done.

Page 14, Lines 2 through 7

DR. MOORE: Because the only reason to fill in the gaps at this

FOOTNOTES (continued)

Footnote 3 continued.
point is not a computation of earnings, it is a collection action.

MR. SLATER: But if the Court directs you, you have authorized me to —

DR. MOORE: Yes I will try to fill in all the gaps that I can, if my memory serves me.

Page 14, Lines 15 through 19

DR.MOORE: I do not have any other records, I would have to interpellate and try — and for your Honor's information, the way the thing is, is that it has to do with liability for those years, **the years are not under investigation for computation of liability, it is a collection action,-**

Page 26, Lines 2 through 7

MR. SLATER: So at this time, Dr. Moore is prepared to assure the court that he will make all efforts to comply with the order of the Court within the framework of the documentss actually existing and also in terms of his appearance before the Internal Revenue Service to answer the questions.

Page 27, Lines 3 through 9

MR. SLATER: I fully expect that you will order those documents turned over to the Internal Revenue Service and that will give them the foundation of some of the documentary evidence as I understand, exists, to get the information when they like. I submit that Dr. Moore, since Monday has made a good faith effort to try to comply with the subpoena.

Page 29, Lines 16 through 22

THE COURT: You will have to sit down and interpret them for them.

THE WITNESS: I could do that. Your Honor, may I ask you one

FOOTNOTES (continued)

Footnote 3 continued.
question its a major concern to me. I will create documents from that, that you are speaking of, the documents do not exists now, and I could not produce administrative documents that existed.

4. *From the Court Transcript February 21, 1990*

Page 30, lines 16 through 18

THE COURT: No, you furnish that to the authorities of the Internal Revenue Service and I am really setting this matter in two weeks, the next motion day.

5. *From the Court Transcript March 7, 1990*

Page 12, lines 16 through 24

MS. ONDREJKO: What did you tell Dr. Moore at that Tuesday meeting?

MS. FELGER: At that Tuesday meeting, I told him that I would contact your office and let you know what he provided and that as far as I could tell at this point, and I was using my own knowledge not any court knowledge because I am not experienced in that area, that what he had provided is what I would consider substantial compliance because I had nothing to base it other wise to say that what he gave me was inaccurate or incomplete.

Page 16, line 17 through Page 17, line 19

MR. SLATER: Brenda, going to the Monday meeting, you were there, another young lady was there and I was there and Dr. Moore was there, isn't that corrcet.

MS. FELGER: That's correct.

MR. SLATER: Now, Dr. Moore had the original of calendars for the time period subject to the subpoena at that time, is that correct.

MS. FELGER: That is correct.

FOOTNOTES (continued)

Footnote 5 continued

MR. SLATER: And Dr. Moore and particularly I said that Dr. Moore is there and he would offer testimony on anything that you want to know about the information on that document, isn't that correct?

MS. FELGER: That's correct.

MR. SLATER: Now, Dr. Moore was willing to answer your questions, isn't that correct?

MS. FELGER: That's correct.

MR. SLATED: Did you ask him any question at that meeeting that he refused to answer?

MS. FELGER: No

MR. SLATER: Now then, it was offered to you to explain each item of information on those calendars, isn't that correct?

MS. FELGER: That's correct.

MR. SLATER: Dr. Moore offered in his statement to you that he would go down the calendars with you so that he could show how each patient was billed and how to come up with the information that he claimed he had no documents to cover, isn't that correct?

MS. FELGER: That is correct.

MR. SLATER: And was it not you who protested that you didn't want to sit there and go through all of those figures?

MS. FELGER: That is correct.

MR. SLATER: And you specifically requested Dr. Moore in lieu of testimony to actually figure the information out for you?

Page 19, lines 5 through 17

MR. SLATER: Now, at this meeting and during the meeting,

FOOTNOTES (continued)

Footnote 5 continued
did — again, Dr. Moore didn't try to refuse to answer any of your questions?

MR. FELGER: No, he answered every one.

MR. SLATER: Now, there was a discussion at that time between you and I that if the information was produced with a rescheduled meeting for one o'clock the following day, that if the information was produced that you would announce to Mrs. Ondrejko satisfaction to the Internal Revenue Service for the information sought, and that if he had not completed calculations that he could do those and submit them later, isn't that correct?

MS. FELGER: **That is correct.**

Page 20, lines 8 through 24

MR. SLATER: And you looked at the information produced and you announced to me and to Dr. Moore at that time that you were satisfied with the information produced, isn't that correct?

MS. FELGER: With my knowledge at that point, yes, I was — I had no problem with the information produced, again there were no records, so I had nothing to say that what I was given was not accurate so I did advise you and Dr. Moore that at this point I was satisfied.

MR. SLATER: In our conversations there wasn't any reservation about the time frame?

MS. FELGER: No.

MR. SLATER: We produced the records and you told us that you were satisfied?

MS. FELGER: Correct.

MR. SLATER: There was no real unpleasantness at the Monday or Tuesday meeting?

MS. FELGER: No

FOOTNOTES (continued)

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[6] *From the Court Transcript March 7, 1990*

Page 4, lines 4 through 15

MS. ONDREJKO: The problem with this information is now, of course, its stale since this proceeding has been active for over a year — not the Court proceeding but this investigation and Dr. Moore claims that these patients have all paid him and that these debt are no longer due and owing and those that are are uncollectible; therefore, the information that we have sought all along will be of no use to us at this point and we have summoned information from March 17th of '89 to current and Dr. Moore has indicated that he will not comply with that based on the defense that he does not possess the document requested. That, or course, has not gotten into the Court's system at this point.

Page 13, lines 7 through 24

MS. ONDREJKO: All the informatin that is on the papers that the Judge has that Dr. Moore provided, all that, the charges that were due and owing according to Dr. Moore, will the IRS be able to collect any of that money from his patients?

MR. SLATER: Your Honor, I object, that's irrelevant, it is only whether it was proper production.

MS. ONDREJKO: Your Honor, it is relevant is the information is no good.

THE COURT: I sustain the objection, *the issue isn't whether you can collect on it, it is whether it complies with the subpoena that was issued or the summons that issued.* You asked for certain information, the fact that the information is so delayed that you can't make collection woul not have anything to do with whether or not subpoena was complied with. It may involve the issue of contempt.

MS. ONDREJKO: I withdraw the question, Your Honor. No further questions. Your Honor, thank you.

Page 28, line 21 through Page 29, line 4

MS. ONDREJKO: Your Honor, If I may, I know that Mrs. Felger

FOOTNOTES (continued)

Footnote 6 continued
issued a new summons to Dr. Moore bringing all the information current, it has not reached the Court yet and has not been referred to our office, however, I am sure she would tell you that when she gave the summons to Dr. Moore he told her that he would not comply with this summons either, which is the same information just up to date because he doesn't have the records. So this problem will not go away. We will keep going through it.

7. *From the Court Transcript March 7, 1990*

Page 23, lines 22, through page 24, lines 1 through 25

THE COURT: When Dr. Moore volunteered to give you information you said that you weren't going to sit there and listen to all of that; why didn't you do that and take notes or a recording of what he was going to say if he has no records and it is all in his head, as it apparently is?

THE WITNESS: Again, the only information he could give me at that time would be the figures, he would not be able to give me any additional information as to address, phone number, because that was not in his head and the information for the charges was not in his head either there were on calendars and he had deciphered for me and had given me that charge for each calendar.

THE COURT: The crucial thing you want to know is how much is owed by a patient or client as of the date of appearance?

THE WITNESS: A-huh.

THE COURT: You did have a list which he supplied the last time of patients, didn't you?

THE WITNESS: Yes I did.

THE COURT: Did you go down that list and ask him for example, how much does Mr. Smith owe you as of right now?

THE WITNESS: No, I did not. When I asked him if there were

FOOTNOTES (continued)

Footnote 7 continued
any amounts still due on these patient he advised me no there were not, they were either paid or deemed uncollectible at this point.

THE COURT: Isn't your purpose to find out who owes him money and then to go get the money from those people and apply that against his tax liability to the government.

THE WITNESS: Yes, it is.

Page 27, Lines 9 through 25

THE COURT: Why wouldn't you accept his oral testimony?

THE WITNESS: His oral testimony — I don't think that it was that I would not accept it.

THE COURT: You said that you wouldn't spend the time doing it, you said that you wanted him to reduce it to writing and give it to you.

THE WITNESS: And we would go over it at that time, I don't think that I refused his testimony, it was simply that rather than waste his time, his attorney's time and my time we had the information, he could go back and calculate and let me know what was still due when he did..

THE COURT: When you don't exhaust the avenues open to you then I have to spend the time in court and spend everybody's time who's here in court going over these matters.

THE WITNESS: I apologize, that was not my intention.

8 *From the Court Transcript March 7, 1990*

Page 32, Lines 7 through 16

DR. MOORE: No, I do not. When I presented in the Court two weeks ago today the day before I came to Court I had prepared through going to the hospital where I work and asking the people in medical records department to prepare me a list of my admissions from August

FOOTNOTES (continued)

Footnote 8 continued
1st to March, 1989, that was the only list that I had and they were kind enough to give me that list and I — the list and the addresses and I made that list and was going to give that to the Court.

[9] *From the Court Transcript March 7, 1990*

Page 34, Lines 14 through 22

MR. SLATER: Let me ask this questin, did you seek to furnish the information in good faith that Internal Revenue Service asked for?

DR. MOORE: I believe that I did in fact heroic, I was sick.

MR. SLATER: Lets go to the Monday meeting, did you appear before the Internal Revenue Service?

DR. MOORE: Yes, I did.

MR. SLATER: Did you refuse to answer any questions that she asked?

DR. MOORE: No, I did not.

[10] *From the Court Transcript March 7, 1990*

Page 46, lines 7 through 21

THE WITNESS: Your Honor, I am going the ask one thing of you. You must understand this from my stand point. The issue of names of psychiatric patients going over to the Court is not something which has great precedent. In the Witenburg case the Court refused to admit the telephone messsages of a psychologist when they were trying to determine his liability because he said there was not way of knowing how many of his patients and no way to calculate the income on the basis of that so they refused it. In another case the Court did allow the ideas of the records of a platic surgeon with the guarding of the name because they were drying to calculate his income. I know of no case in which names of patients have been given over to an agency for that agency to go to those patients and interrupt the relationship which is so crucial to their treatment.

FOOTNOTES (continued)

Footnote 10 continued
page 48 lines 15 through 21

THE WITNESS: ... Last week we talked about the level of secrecy that somebody has to be exposed to before they are exposed to an invasion of their privacy for urine tests for drugs, that's being debated and debated and here we will say in a one swoop that a large number of people throughout the country can have unconcerned third parties interfere with the most delicate of medical treatments.

A-191

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

90-3426

UNITED STATES of AMERICA, ET AL.,
Plaintiffs-Appellees,

versus

THOMAS A. MOORE, M.D.
Defendant-Appellant

On Appeal from the
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

EXHIBITS, CASE DOCKET, AND DOCKET EXCERPTS FOR APPELLANT'S BRIEF TO SHOW HIS COMPLIANCE WITH CIVIL SUMMONS AND IN OPPOSITION TO THE RULE OF CONTEMPT

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Exhibits
Taable of Contents

Exhibit # 1
List submitted by Bayou Oaks Hospital showing Hospital Record Number and Date of Admissions to service of Thomas A. Moore, M. D. from September 1, 1988 through March 17, 1989.

Exhibit # 2
Narrative History of "Acadiana Psychiatric Service, A Medical Corporation".

Exhibit # 3
COMPLAINT FOR DAMAGES WITH REQUEST FOR JURY TRIAL with attached *MEMORANDUM TO SUBSTANTIATE INJURY AND DAMAGES*

Exhibit # 4
Minute Entry-Civil Action # 92-0367 (B), United States District Court - Eastern District of Louisiana, entered June 2, 1992

Exhibit # 5
PLAINTIFF'S MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS ENTRY INTO PLAINTIFF'S HOME-Civil Action # 92-0367 (B), United States District Court - Eastern District of Louisiana

Exhibit # 6
Response to Rule to Show Cause- Civil Action # 89-2451 (C), United States District Court - Eastern District of Louisiana

EXHIBITS (continued)

Exhibit # 7
Civil Docket for Case # 89-CV-2451, United States District Court - Eastern District of Louisiana

Exhibit # 8
Minute Entry-Civil Action # 89-CV-2451, From Hearing of February 21, 1990, United States District Court - Eastern District of Louisiana, entered Februaray 26, 1990

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Minute Entry-Civil Action # 89-CV-2451, From Hearing of February 21, 1990, United States District Court - Eastern District of Louisiana, entered Februaray 26, 1990

Narrative History of

Acadiana Psychiatric Services, A Medical Corporation

Acadiana Psychiatric Services, A Medical Corporation was formed before a Notary Public in Terrebonne Parish, State of Louisiana, on February 28, 1990, and was filed and recorded in the office of the Secretarty of State of Louisiana on March 5, 1990.

Acadiana Psychiatric Services, A Medical Corporation ("Acadiana") was formed and incorporated by Thomas A. Moore, M.D. ("Dr. Moore") on advice of his counsel, Mr. Charley Schrader ("Mr. Schrader"), in order to provide efficiency, accuracy, and verifiability of services rendered by Thomas A. Moore, M.D., and associated para-professionals on contract with "Acadiana", while maintaining the complete confidentiality of persons receiving those service.[1]

To achieve that objective, meetings were held during the month of March, 1990, with Mr. Schrader, Mr. Claude Bergeron, a C.P.A., Mr. Owen Dahl, a Professional Medical Office Consultant, (Delta professionals), Mrs. Dorothy Lynn Moore, Office Manager of "Acadiana", and Dr. Moore. As the suggestions of those professionals were adopted during the month of March, 1990, they were incorporated into the records of "Acadiana" to evolve eventually into the system which would meet the needs of all concerned.

On March 19, 1990, Dr. Moore and Mr. Schrader met with

Footnote 1 on page A-198.

Internal Revenue Service Agents Brenda Felger and Steve Fanguy in connection with a summons issued to Dr. Moore to produce administrative records. Though Agent Felger had been present in Court on Feb. 21, 1990, when Dr. Moore referred to the corporation,[1] "Acadiana's" existence seemed to be a complete surprise to her. Having enlightened her of it's formation and purposes, she was invited to participate in further meetings on "Acadiana's" accounting system to critique and make suggestions to assure that the final system would fulfil the auditing needs of her agency.[2]

The functioning of "Acadiana" was delivered a severe blow on March 29, 1990. On that date Agents of the Internal Revenue Service entered the home of Dr. Moore and his wife, Dorothy Lynn Moore (Mrs. Moore), on a *Writ of Entry* granted by Magistrate A. Chasez, given in response to an *Exparte Motion* based on *Declarations* by Agent Felger that Mrs. Moore was holding certain items as "Nominee" of Dr. Moore. While in the house, Agents searched the office and carried away all of "Acadiana's" newly prepared records.[3] Records had to be totally reconstructed in the following weeks. Nonetheless, attorneys representing "Acadiana" had several meetings with Agents of the Internal Revenue Service in an effort to establish guidelines acceptable to the Agency during the month of April, 1990. These negotiations came to an abrupt halt when the funds of the corporation were levied upon on May 7, 1990 after Agent Felger named "Acadiana" the Nominee of Dr.

Footnote 1 on page A-198.
Footnote 2 on page A-198.
Footnote 3 on page A-198.

Moore.[4]

"Acadiana", a newly formed and operating on funds attained through loans, now found itself assigned by "**Fiat**" with the obligations of Dr. Moore, and unable to meet it's obligations to it's employees and it's contract personnel. Efforts in progress to hire additional employees were scuttled as the corporation found itself crippled by the notoriety surrounding the precipitous seizures of it's property.

"Acadiana" sought the protection of the Bankruptcy Court with the assistance of counsel, Mr. Ron Hof, and filed Chapter 11 on June 6, 1990, Case # 90-12072-TMB. In July, 1990 Mr. Michael Mayhall, a tax attorney, was appointed co-counsel, and an Adversary Suit, *COMPLAINT TO COMPEL TURNOVER OF PROPERTY AND FOR DAMAGES,* was filed in September, 1990 in the Bankruptcy Court challenging the Internal Revenue Service's baseless seizure actions.

Dr. Moore had sought the counsel of Mr. Hof for his individual financial problems and had sought the protection of the Bankruptcy Court, Case # 90-12071-TMB, on June 6, 1990.

The U. S. Trustee objected to Mr. Hof's representation of the two cases, stating there was a conflict of interest between the two separate parties. This objection was sustained by the Hon. Judge T.M. Brahney, and Mr. Joseph Nielsen replaced Mr. Hof as counsel for "Acadiana".

Footnote 4 on page A-198.

"Acadiana" had fully expected that a resolution of the Adversary Suit, recognizing it as *a separate juridical entity,* would have occurred by this time, and the corporation would have it's wrongfully seized property returned. With this the corporation would quickly emerge from Chapter 11, and could conduct it's business as is it's right by law.

"Acadiana" has continued to function despite the needless, baseless, and destructive attack by the Agents of the Internal Revenue Service, "Acadiana" steadfastly denies the claim that it is the "Nominee" of Dr. Moore, A Motion to deny the claim of the Internal Revenue Service will be filed citing the breaches of procedure, and the reckless, malicious conduct of the persons responsible.[5] With the resolution of the issue of the Internal Revenue Service's spurious claim, "Acadiana" believes it can fully satisfy the true creditors by continuing it's business.

Footnote 5 on page A-199.

FOOTNOTES

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1. Dr. Moore was involved in an ongoing controversy with the Internal Revenue Service, Civil Case # 89-2451, and testified in Court March 7, 1990, Page 45; lines 11-13; *"It is because we have formulated the situataion I am incorporating, I am going to keep meticulous records and they can come and dun my salary."* page 47; lines 14-16; *"I am setting up a corporation, all the records will be kept meticulously, they can come and dun my salaly from the corporation."*

2. *In that meeteing Mr. Schrader echoed Dr. Moore's testimony by stating that the Internal Revenue Service could determine what income from "Acadiana" it would allow Dr. Moore to live on, and the Internal Revenue Service would get the balance. Mr. Schrader left the meeting with the understanding that he would meet with Agent Felger the next week. After several calls the next week were not returned, Mr. Schrader went to the Houma Internal Revenue Service office looking for Agent Felger. He was informed she was unavailable, however, her supervisor, Agent Henry McKinell, met with Mr. Schrader and discussed agency policy in regards to the amount of funds Dr. Moore would be allowed for living expenses.*

3 *The actions of the Agents are the subject of a related Civil Case #* 92-0367 currently in THE UNITED STATES DISTRICT COURT-EASTERN DISTRICT OF LOUISIANA in which Dr. Moore alleges the conduct of the Defendants named violated his rights under the Fourth Amendment to the Constitution of the United States. In His minute entry of June 2,1991, the Court stated. *"The Court determines these allegations are sufficiently fact specific to defeat, at this stage in the proceedings, a motion to dismiss or for summary judgement on the grounds of qualified immunity."*

4 The May 7, 1990 seizure followed on the heels of a clandestine and unorthodoz seizure in the closing hours of May 4, 1990, when Agents of the Internal Revenue Service accompanied by Jill Ondrejko, Assst. U. S. Attorney, had a *Declaratin of a Revenue Officer,* signed by Agent Felger; and *Exparte Motion for Writ of Entry,* signed by Jill Ondrejko; and a *Writ of Entry* executed by Magistrate Chasez; all faxed to the Crown Holiday Inn adjacent to the Windsor Court Hotel after 11 P.M. in order to enter the hotel property to seize an automobile which "Acadiana" had acquired a week earlier. This seizure was so hurried that the Levy documents failed to mention anything about "Acadiana". It is

FOOTNOTES (continued)

Footnote 4 continued
as if the naming of "Acadiana" as Nominee the following Monday, May 7, 1990 was an afterthought.

5. These persons are all named as Defendants in Case # 92-0367, UNITED STATES DISTRICT COURT-EASTERN DISTRICT OF LOUISIANA

APPENDIX L

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA, and EUGENE NEPVEAUX, REVENUE OFFICER OF THE INTERNAL REVENUE SERVICE	)	
Plaintiffs-Appellees	)	
v.	)	No. 90-3426
THOMAS A. MOORE, M.D.,	)	
Defendant-Appellant)		

MOTION TO REMAND AND TO SUSPEND BRIEFING SCHEDULE PENDING DISPOSITION OF THE MOTIONS

The United States of America and Eugene Nepveaux, Revenue Officer of the Internal Revenue Service, the appellees herein, by their counsel, respectfully move that the above-captioned case be remanded in order to permit the appellees to move the United States District Court for the Eastern District of Louisiana to vacate its order finding the appellant in contempt of court. The appelles also request that the briefing schedule in the case be suspended pending disposition of the motion to remand

the appeal, and that should the Court deny their motion to remand, the time for filing their brief be extended to 30 days after the date of that denial.

Dr. Thomas Moore, M.D. (taxpayer) is a practicing psychiatrist in Houma, Louisiana. *United States v. Moore,* 5th Cir. No. 89-3896 (August 28, 1992) (slip opinion at p. 6692). Taxpayer did not file federal income tax returns for the years 1977 through 1987 and has made no payments of his 1988 tax liability. As a result, Dr. Moore is indebted to the Internal Revenue Service (IRS) for unpaid taxes, interest, and penalties totaling more than $1 million. *Ibid.*

In 1989, Eugene Nepveaux, the IRS Revenue Officer assigned to collect that delinquent amount from taxpayer, issued a summons requesting that taxpayer produce his Accounts Receivable records indicating the name of each patient, the amount owed by each patient, and the insurance company or other indemnifier of each patient. Taxpayer refused to produce the requested documents on the grounds that to do so would constitute a violation of the doctor-patient privilege under Louisiana law. The United States and Revenue Officer Nepveaux then petitioned the United States District Court for the Eastern District Court of Louisiana for an order enforcing the summons. *Ibid.*

On October 19, 1989, the District Court ordered that taxpayer comply with the summons. (Doc. 16.) [1] On January 2, 1990, this Court denied taxpayer's motion for a

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[1] "Doc." references are to the documents in the original record on appeal as numbered by the Clerk of the District Court and transmitted to this Court.

stay of enforcement of the summons pending appeal. (Doc. 23.) Taxpayer, however, continued to refuses to comply with the summons. As a result, the Government sought to have him held in contempt of court to coerce his compliance. (Doc. 25.)

On February 21, 1990, the District Court (Hon. Robert F. Collins) found taxpayer in contempt of court. (Doc. 30.) The Court, however, explained that it "will withhold imposition of a penalty at this time, to give [taxpayer] the opportunity to purge himself of the contempt." (Doc. 30.) Taxpayer, however, continued to fail to comply with the summons. Accordingly, following a May 6, 1990, hearing, the District Court found that taxpayer's compliance with the summons was incomplete, and that he was in continuous contempt of the original order of the Court. (Doc. 68.)

On May 31, 1990, taxpayer filed a notice of appeal to this Court from the District "Court's judgment of May 30, 1990, finding [taxpayer] in contempt and ordering him to pay a fine and serve jail time." (Doc. 65.) Thereafter, on June 6, 1990, the District Court ordered that "until [taxpayer] fully and completely complies with the Summons, he shall be and is hereby **FINED** the sum of $100.00 per day for 15 days, then $200.00 per day for another 15 days, and thereafter, he is to be incarcerated until the Court finds that he has purged himself of contempt." (Doc. 69.) On that same day, taxpayer filed a voluntary bankruptcy petition under Chapter 11 of the Bankruptcy Code. *United States v. Moore,* 5th Cir. No. 89-3896 (August 28, 1992) (slip opinion at p. 6692). Thus, before taxpayer could be fined or incarcerated for his contempt, the proceedings were stayed

pursuant to 11 U.S.C. § 362. *Ibid.* Folowing the dismissal of taxpayer's bankruptcy proceedings (and the lifting of the automatic stay), this Court, on August 28, 1992, affirmed the District Court's order enforcing the summons issued to taxpayer. *United States v. Moore,* 5th Cir. No. 89-3896 (August 28, 1992).

On September 11, 1992, this office was advised that the IRS has now obtained the sought after information from other sources and, as a result, no longer desires that the summons be enforced. Accordingly, we request that the Court remand this case to the District Court so that the Government may move to vacate the order finding taxpayer in contempt of court.

CONCLUSION

For the reasons stated herein, the appeal should be remanded to the District Court so that the Government may move to vacate the order finding taxpayer in contempt of court. The appellees also request that the briefing schedule in the case be suspended pending disposition of the motion to remand the appeal, and that should the Court deny their motion to remand, the time for filing their brief be extended to 30 days after the date of that denial.

Respectfully submitted,

/s/ James A. Bruton
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APPENDIX M

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

90-3426

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UNITED STATES of AMERICA, ET AL.,
Plaintiffs-Appellees,

versus

THOMAS A. MOORE, M.D.
Defendant-Appellant

Now into Court comes the Appellant, Thomas A. Moore, M. D., Pro Se, to respectfully request that the Court refuse the request of Appellees to remand and require the Apellees to file their Brief in a timely manner.

GROUNDS FOR REQUEST

The Appellant asks his Motion be granted for the following reasons:

a) Appellees have had a previous extension of time for filing.

b) Apelles' assertions of facts in their *Motion to Remand* demonstrate poor knowledge and

understanding of the train of events leading to this action being before the Court.

c) Counsel for the Appellees' assertion that, "On September 11, 1992 this office was advised that the IRS has now obtained the sought after information from other sources and, as a result, no longer desires that the summons be enforced", strains the credulity of even the most naive.

d) Appellant avers that the *Motion to Remand* represents yet another glib attempt to cover, "The egregious, knowing, malicious and wanton actions of the Agents and Attorneys present—", at the seizures of March 29, and 30, 1990. (See Appellant's Brief-Pages 10, 11, & 12 with ref. Exhibits #3, 4, & 5)

e) Appellant avers that Counsel for the Appellees knew, or should have known, during the May 16, and May 30, 1992 Hearings before Hon. Judge Robert F. Collins, that the Appellant had complied with the Summons of March 6, 1989, and the Affidavit and testimony of Agent Felger was stricken at the request of then Counsel, Asst. U. S. Attorney Jill Ondrejko in a deliberate attempt to mislead the District Court's sitting Judge, the Hon. Robert F. Collins.

f) Appellant avers that the conduct of Counsel in the Hearings of May 16, and May 30, 1990, and

the continuing conduct of successive Counsel may well constitute fraud upon the Courts involved.

g) Appellant prays that Court will inquire into the facts as to the particulars of claimed eleventh hour revelation to present Counsel, "that the IRS has now obtained the sought after information".

h) Appellant respectfully points out that should it come to light that the IRS and it's Counsel had, "the sought after information", as the Appellant and his former Counsel, Mr. Arthur Lemann, III, asserted since May 30, 1990, this Honorable Court would not have had the burden of this action, nor would it have had to allot time used in *United States v. Moore,* 5th Cir. No. 89-3896 (August 28, 1992).

CONCLUSION

Considering the above, Appellant prays this Honorable Court will refuse to remand this to the District Court and require the Appellees to file their Brief as part of their duty in having pursued their actions against the Appellant. Full disclosure should be made to this Honorable Court as to how, and through whom, counsel's claim of "infused Knowledge", came so miraculously on September 11, 1992.

Respectfully submitted:

/s/ Thomas A. Moore, M.D.

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APPENDIX N

COPY

IN THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

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PROGRESSIVE BANK & TRUST CO.,	)	
Plaintiff,	)	
v.	)	Civil No. 90-1918
	)	Sec. A "5"
DOROTHY LYNN MOORE and UNITED STATES OF AMERICA,	)	
Defendants.	)	

STIPULATION

IT IS HEREBY stipulated and agreed between Dorothy Lynn Moore, pro se, and the United States of America, by and through its undersigned attorney,as follows:

EXHIBIT
A

1. *Progressive Bank* v. *Dorothy Lynn Moore and United States of America*, Case No. 90-1918 Sec. "A" (5) (E.D. La.), will be dismissed with prejudice.

2. The property at issue in *Progressive Bank* v. *Dorothy Lynn Moore and United States of America*, Case No. 90-1918 "A" (5) (E.D. La.), will be returned to Dorothy Lynn Moore ("Mrs. Moore") or retained by the Internal Revenue service as follows:

a. The immovable property located at 207 Oak Alley Drive, Houma, Louisiana, described in paragraph XXIX of the cross-claim will be retained by the Internal Revenue Service.

b. The Rolls Royce described in paragraph XXXIII of the cross-claim will be retained by the Internal Revenue Service.

c. All items listed in paragraphs XXXII, XXXIV, XXXV, XXXVI, XXXVII and XXXVIII of the cross-claim will be returned to Mrs. Moore.

d. The cash described in paragraph XXXIX of the cross-claim will be retained by the Internal Revenue Service.

e. Fifty percent of the fund described in paragraphs XL and XLI of the cross-claim will be retained by the Internal Revenue Service.

f. Fifty percent of the funds described in paragraph XLII of the cross-claim will be retained by the Internal

Revenue Service. Mrs. Moore will not be liable for any federal taxes resulting from the retention of the fifty percent by the Internal Revenue Service.

3. All items returned to Mrs. Moore will be discharged from the federal tax liens securing the federal income tax liabilities of Thomas A. Moore, Sr., ("Dr. Moore"), for the years ended December 31, 1980-1984 and 1986-1989. The nominee notice of federal tax lien filed in the name of Mrs. Moore will be released by the Internal Revenue Service. Mrs. Moore is not the nominee of Dr. Moore with respect to these items.

4. Mrs. Moore does not have any claim, right or interest in the property retained by the Internal Revenue Service.

5. This settlement is not a settlement of the federal income tax liabilities of Dr. Moore.

6. The Internal Revenue service will release the real property located in Mobile County, Alabama, from the federal tax liens securing the federal income tax liabilities of Dr. Moore for the years ended December 31, 1980-1984 and 1986-1989.

7. All other property seized by the Intenal Revenue Service on March 29, 1990, not otherwise provided above, will be retained by the Internal Revenue Service.

s/ Dorothy Lynn Moore

DOROTHY LYNN MOORE
Pro Se

/s/ Jose F. De Leon

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Counsel for United States

CERTIFICATE OF SERVICE

I hereby certify that I have on this 24 day of Oct, 1991 served a copy of the foregoing on all counsel of record via the United States Postal Service, properly addressed, and postage prepaid.

/s/ Illegible